CLERK'S COPY. 2379

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 207.

G. H. THAYER, ADMINISTRATOR OF THE ESTATE OF DAVID WHITNEY, Jr., DECEASED, D. C. WHITNEY AND CHARLES STINCHFIELD, TRUSTEES UNDER THE WILL OF DAVID WHITNEY, Jr., DECEASED, SUBSTITUTED FOR DAVID WHITNEY, Jr., AND CHARLES STINCHFIELD, AND JAMES A. REMICK, TRUSTEE, PLAINTIFFS IN ERROR,

vs.

A. N. SPRATT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED DECEMBER 7, 1901.

(18,248.)

(18,346.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 493.

G. H. THAYER, ADMINISTRATOR OF THE ESTATE OF DAVID WHITNEY, JR., DECEASED; D. C. WHITNEY AND CHARLES STINCHFIELD, TRUSTEES UNDER THE WILL OF DAVID WHITNEY, JR., DECEASED, SUBSTITUTED FOR DAVID WHITNEY, JR., AND CHARLES STINCHFIELD, AND JAMES A. REMICK, TRUSTEE, PLAINTIFFS IN ERROR,

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IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 20, 1902.

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a In the Supreme Court of the State of Washington.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustee-, Plaintiffs in Error,
v.
A. N. SPRATT, Defendant in Error.

Appeal from the supreme court of the State of Washington to the Supreme Court of the United States.

[Seal of the Supreme Court, State of Washington.]

1 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustees, Plaintiffs,
vs.
A. N. SPRATT, Defendant. } No. 3744.

Plaintiffs complaining of the defendant, for cause of suit allege: That the plaintiffs are now and ever since the 12th, day of Aug., 1890, have been the owners in fee-simple by patent from the United States Government and in possession of all the following-described real property, to wit: Section thirty-two (32) in township nine (9) north of range four (4) west of the Willamette meridian, situate in Cowlitz county, State of Washington.

That there appears upon the records in the office of the auditor of Cowlitz county, Washington, a certain pretended conveyance affecting the title to said land, to wit: On page 81 of Book "1," records of deeds of said county, a conveyance in form a warranty deed from Frank Smith to A. N. Spratt of date February 13, 1884, filed for record February 27, 1884, purporting to convey from said Frank Smith to A. N. Spratt the northwest quarter of section 32, township 9, north of range 4 west.

That said pretended conveyance is a cloud upon the title of plaintiff to said northwest quarter of section 32, township 9 north of range 4 west.

That there appears upon the records in the office of the auditor for Cowlitz county, Washington, a certain pretended conveyance, to wit: A conveyance in form a warranty deed from Frank Smith to A. N. Spratt. of date February 13, 1884, recorded at page 97 of Book "1," records of deeds of said county, filed for record March, 20, 1884, and purporting to convey from said Frank Smith to A. N. Spratt the northeast quarter of section 32, township 9 north of range 4 west. That said pretended conveyance is a cloud upon the title of plaintiffs to said northeast quarter of section 32, township 9 north of range 4 west.

2 That there appears upon the records of the auditor of Cowlitz county Washington, a certain pretended conveyance of date February 13, 1884, recorded at page 82 of Book "1," of the records of deeds of said county, in form a warranty deed, purporting to convey from James M. Radcliffe to A. N. Spratt, the southwest quarter of section 32, township 9 north of range 4 west. That said pretended conveyance is a cloud upon plaintiffs' title to said southwest quarter of section 32, township 9 north of range 4 west.

That there appears upon the records of the auditor of Cowlitz county, Washington, a certain pretended conveyance, in form a warranty deed, dated February 13, 1884, filed for record March 20, 1884, and recorded at page 89 in Book "1," records of deeds for said county, purporting to convey from James M. Radcliffe to A. N. Spratt the southeast quarter of section 32, township 9 north of range 4 west. That said pretended conveyance is a cloud upon plaintiffs' title to said southeast quarter of section 32 township 9 north of range 4 west.

That said A. N. Spratt by virtue of said instruments claims and sets up title to the property described above. That the claim of the defendant is without any right whatever, and that the said defendant *is* not now, nor has he at any time had, any title whatever to said real estate, or any part or parcel thereof.

That these plaintiffs are entitled to have said instruments of writing cancelled as being clouds upon plaintiffs' title, and to have plaintiffs' title quieted as to any claim of the said A. N. Spratt under said instruments or either of them?

Wherefore, plaintiffs pray for a decree of this court quieting plaintiffs' title to all said real property and cancelling said several pretended conveyances above set out; that by such decree it be declared and adjudged that defendant has no interest whatever in or to said lands or premises or any part thereof, and that he be forever barred from asserting any claim whatever in or to said land or any part thereof adverse to plaintiffs; and for such other and further relief as — the court may seem equitable.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Plaintiffs.

3 STATE OF WASHINGTON, }
County of Cowlitz. }

I, W. W. Curtis being first duly sworn, say that I am the agent and attorney-in-fact of David Whitney, Jr., Charles Stinchfield and James A. Remick, trustee-, plaintiffs in the above-entitled suit; that the facts stated in the foregoing complaint are all within my personal knowledge, and that the allegations in the foregoing complaint are true, as I verily believe. That neither of said plaintiffs are now within Cowlitz county or in the State of Washington, which is the reason I make this affidavit.

W. W. CURTIS.

Subscribed and sworn to before me this 23 day of December, 1898.

W. A. CADWELL,
Clerk of the Superior Court.

[SEAL.]

4 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

To the Hon. A. L. Miller, judge of the above-entitled court:

The defendant in the above-entitled action, in answer to the complaint filed herein, would most respectfully deny and allege as follows, to wit:

Denies that plaintiff-, or either of them, now are, or ever since the 12th day of August, 1890, or for any time, have been the owners in fee-simple by patent from the United States Government, or otherwise, or have any title to, or interest in the land described in the complaint, or any part thereof, except as hereinafter alleged.

Denies that the plaintiffs, or either of them, now are or have been since the 12th day of August, 1890, or at any other time, in the possession of section 32 in township 9 north of range 4 west of the Willamette meridian, situate in Cowlitz county, State of Washington, or any part thereof.

Denies that there is any pretended conveyance affecting the title to said described land, or any part thereof, on page 81 of Book "I" of records of deeds of said Cowlitz county, State of Washington, or of record in any other records of said county; and denies that the warranty deed from Frank Smith to A. N. Spratt of date February 13th, 1884, filed for record February 27th, 1884, purporting to convey from Frank Smith to A. N. Spratt the northwest quarter

5 of section 32, township 9 north of range 4 west, is or was a pretended conveyance; but avers that said deed was an actual *bona fide* conveyance of the title and interest of the said Frank Smith in and to said lands, as hereinafter set forth.

Denies that there appears upon the records in the office of the auditor of Cowlitz county, State of Washington, any pretended conveyance, or that the conveyance in form of warranty deed from Frank Smith to A. N. Spratt of date February 13th, 1884, and recorded on page 97 of Book "I" records of deeds of said county, and filed for record March 20th, 1884, and purporting to convey from said Frank Smith to A. N. Spratt the northeast quarter of section 32, township 9 north of range 4 west, is, or was a pretented conveyance of said land, or any part thereof, but avers that said deed, recorded as aforesaid, was an actual *bona fide* warranty deed, conveying the interest and the title of the said Frank Smith in said land at the date of the execution of said conveyance, as hereinafter

alleged; and denies that said conveyance from Frank Smith to A. N. Spratt is, or ever was a pretended conveyance.

Denies that the deed that appears of record in the auditor's office in Cowlitz county, State of Washington, on page 82 of Book "I" of deeds of said county, is or ever was a pretended conveyance of said deed of date February 13th, 1884, in form of warranty deed purporting to convey from James M. Radcliffe to A. N. Spratt the southwest quarter of section 32 township 9 north of range 4 west is, or ever was a pretended conveyance, but avers that said deed was a *bona fide* conveyance in fact of all the title or interest the said James M. Radcliffe had to or in said land, and of the whole thereof, as hereinafter set forth; and denies that said conveyance which
6 is claimed as a cloud on plaintiffs' title was ever pretended.

Denies that the deed in form of warranty, dated February 13th, 1884, filed for record March 20th, 1884, in Book "I" of records of deeds for said Cowlitz county, State of Washington, purporting to convey from James M. Radcliffe to A. N. Spratt the southeast quarter of section 32 township 9 north of range 4 west, is, or ever was a pretended conveyance; but avers that said deed was a *bona fide* conveyance of the right, title and interest that the said James M. Radcliffe had in and to said land at the time, and of the whole thereof, as hereinafter alleged; and denies that said conveyance which is alleged in the complaint to be a cloud upon plaintiffs' title to said southwest quarter of section 32 is, or ever was a pretended conveyance.

Denies that the claim of the defendant of title to the real property described in the complaint is without any right whatever or that the said defendant *is* not now, nor has he at any time had any title whatever to said real estate, or any part or parcel thereof.

Denies that plaintiffs, or either of them, are entitled to have said instruments of writing, or any of them, cancelled as being clouds or a cloud upon plaintiffs' title, or to have plaintiffs', or either of their title quieted as to any claim of the said A. N. Spratt under said instrument-, or either of them.

Defendant, further answering said complaint, alleges: that on and prior to the — day of —— 1883, the northeast quarter of section 32 township 9 north range 4 west, Willamette meridian, was timber land subject to entry and sale as such, under the act of Congress of the United States, approved June 3rd, 1878, entitled
7 "An act for the sale of timber land of the States of California, Oregon, Nevada and Washington Territory":

That on the said — day of ——, 1883, Frank Smith, a citizen of the United States, was entitled to the benefit of the said act of Congress of June 3rd, 1878, and was entitled to purchase 160 acres of land subject to entry under said act.

That on said date the said Frank Smith duly made application to purchase said northeast quarter of section 32 township 9 north of range 4 west, Willamette meridian, under said act of Congress, of June 3rd, 1878, at the land office at Vancouver, Washington, (the Territory) the same being the land office for the district of lands in which said premises were situate, and in all things duly complied

with the said act, and with the laws of the United States, and the rules and regulations of the Land Department to enable him to purchase said land, and paid the fees required of him for that purpose.

That thereafter on the 20th day of August, 1883, the said Frank Smith, having complied with the provisions of said act of June 3rd, 1878, paid to the United States the sum of $400.00, in payment for said land, and received therefor a duplicate receiver's receipt, of which the following is a copy, to wit:

Duplicate. No. 2220.

RECEIVER'S OFFICE AT VANCOUVER,
WASH. TER., *August 20th*, 1883.

Received from Frank Smith of Cowlitz county, Wash. Ter., the sum of four hundred dollars and — cents; being in full for the northeast quarter of section No. thirty-two, in township No. nine, north of range No. four west Will. mer. containing one hundred and sixty acres and — hundredths, at $2.50 per acre.

[Written across the face in red ink:] Act June 3, 1878.

8 Fees for allowing entry paid $10.00.
$400.00. (Signed) A. O. MARSH, *Receiver.*

That the money so paid by said Frank Smith as aforesaid, has been kept and retained by the Government of the United States and has not been paid or tendered either to the said Frank Smith or to any of his successors in interest.

That prior to the 13th day of February, 1884, this defendant purchased said northeast quarter of section 32, from the said Frank Smith, and paid him therefor the sum of $800.00, and that thereafter, on the 13th day of February, 1884, the said Frank Smith, by his said deed, duly conveyed the said land by deed with covenants of warranty to this defendant, and that thereafter, on the 20th day of March, 1884, this defendant caused said deed to be recorded in the records of deeds of said Cowlitz county, State (then Territory) of Washington, at page 97 of records of deeds, said deed being duly executed, witnessed, acknowledged and certified so as to entitle it to be recorded.

That by said deed this defendant became the owner of said land.

That thereafter on January 21st, 1886, the Commissioner of the United States *of the* General Land Office, without any notice to, and without the knowledge of this defendant, wrongfully, unlawfully, and fraudulently cancelled said entry of said Frank Smith of said land under said timber act.

That at the time said Commissioner so cancelled said entry, he knew and had notice that this defendant had purchased all the right, title and interest of said Smith in said land and that said deed was recorded as aforesaid.

9 That prior to the 21st day of February, 1886, a special agent of the United States reported to said Commissioner of the General Land Office that said land was more valuable for agri-

cultural purposes than for the timber thereon; that at the time said special agent claimed to have examined said land, the same was covered with a dense growth of large yellow and red fir and cedar timber, and was so densely covered with timber as to be entirely unfit for any kind of cultivation, and was of no value whatever for agricultural purposes, but the said timber was large and fine and fit for manufacturing into saw-logs and lumber and the chief value of said land at that time was in its said timber; that the said special agent that made said report at the time he made said report know that said land was so covered with said timber, and that said land could not be cultivated on account of the said timber and was entirely unfit for any kind of agricultural purposes, and was of no value for agricultural purposes of any kind, fraudulently made said report to said General Land Office that said land was more valuable for agricultural purposes than for the timber thereon; that said report was made prior to February 21st, 1886, and upon such fraudulent and false report the said Commissioner of the General Land Office cancelled said entry of said Frank Smith without any notice to this defendant. That this defendant had no notice or knowledge that such report had been made or filed in said land office by said special agent until long after said entry was canceled and until after the patent to said land was issued by the United States to B. L. Henness as hereinafter alleged.

10 That at and prior to the time said special agent made said fraudulent report and the time said Commissioner of said General Land Office of the United States cancelled said entry, the said Commissioner of the General Land Office and the Secretary of the Interior of the United States held and ruled erroneously that land that was covered with a heavy growth of valuable timber if it could be successfully cultivated after the timber was removed, that then such lands were not chiefly valuable for the timber thereon, and *was* not subject to entry as timber land under the said act of June 3rd, 1878, although the timber on such land might be its chief value, and the land might not be at all cultivated in its then condition. That said Commissioner of the General Land Office acted upon said erroneous construction of said act of June 3rd, 1878, in cancelling said entry of said Frank Smith on February 21st, 1886.

That acting under said erroneous construction of said act of June 3rd, 1878, prior to the time said special agent pretended to have examined said land the said Commissioner of the General Land Office instructed all the special agents of the General Land Office of the Department of the Interior of the United States sent out to examine and report upon entries of land under the laws of the United States to examine timber entries and to report all such entries where the land could be cultivated after the removal of the timber therefrom as land chiefly valuable for agricultural purposes although the same could not be cultivated in its then condition.

That under such instruction the said special agent pretended to examine said land and entry of Frank Smith, and made said

false, fraudulent and erroneous report, when in truth and
11 in fact and law the said land was chiefly valuable for the timber thereon, and totally unfit for any kind of cultivation.

That thereafter, to wit: on April 9th, 1888, said entry having been so cancelled as aforesaid, one Benjamin L. Henness made a homestead entry in said land office of said northeast quarter of said section 32 which said homestead entry was thereafter commuted to cash, and thereafter, on the 25th day of June, 1890, a patent was issued for said land on said cash entry to the said Benjamin L. Henniss, and the plaintiffs herein claim title to said land through mesne conveyance from the said Henness to said plaintiffs.

That at and prior to the time the said Henness made said homestead entry and purchased said land for cash as aforesaid, and obtained said patent for said land, he had due notice and knowledge that said Frank Smith had made said timber entry and had purchased and paid for said land as aforesaid, and that said Smith had so sold and conveyed his said interest in said land to this defendant for a valuable consideration, and that said deed was on record in the records of deeds of Cowlitz county, State (then Territory) of Washington.

That each and all of the persons through whom the said title passed from the said Benjamin L. Henness to the plaintiffs and each and all of the said plaintiffs at the time they acquired title to said land had due notice and knowledge that the said Frank Smith had so entered and purchased said land as timber land, and had sold and conveyed the same for a valuable consideration to this defend-
ant, and that said deed of February 13th, 1884, was recorded
12 in Book "I" page 97 of records of deeds of Cowlitz county, State (then Territory) of Washington, since March 20th, 1884, and these plaintiffs and each of them took the title to said land with full notice and knowledge that this defendant was the owner thereof, and took and held the same as trustees for this defendant.

Defendant, further answering said complaint, avers that at and prior to the time he purchased said land and paid for the same, he had no notice, knowledge, intimation, or information whatever, that the said Frank Smith was not entitled to make such entry, or that said land was not subject to entry under the said act of June 3rd, 1878, and that he in good faith, and without any such knowledge, intimation or information, purchased said land and paid the sum of $800.00 to the said Frank Smith therefor, believing that the said Smith was the owner thereof, and had a good right to purchase the same under said act of June 3rd, 1878, and that said land was subject to entry and purchase under said act as timber land; and that this defendant is the *bona fide* purchaser of said land, and that these plaintiffs and their predecessors in interest took said land and held the same, and now hold the same, as trustees for this defendant.

Defendant, for a further answer, avers, that prior to the 2nd day of February, 1884, Frank Smith, a citizen of the United States and entitled to the benefit of the pre-emption laws of the United States, had under the said pre-emption laws, entered the northwest quarter of section 32, township 9, north of range four west of Willamette

meridian, Cowlitz county, State (then Territory) of Washington, in the United States land office at Vancouver, Washington, the same being the land office in the district in which said land was situated.

That said Frank Smith having complied with the provisions of the said pre-emption laws, paid to the United States the sum of $400.00, in payment for said land, and received therefor a
13 duplicate receiver's receipt, bearing date of February 2nd, 1884, of which the following is a copy to wit:

Duplicate. No. 2300.

RECEIVER'S OFFICE AT VANCOUVER,
W. T., *February 2nd*, 1884.

Received from Frank Smith of Cowlitz county, Wash. Ter. the sum of four hundred dollars and — cents, being in full for the northwest quarter of section No. 32 in township No. nine north of range No. four west Will. mer. containing one hundred and sixty acres and — hundredths, at $2.50 per acre.

(Signed) A. O. MARSH, *Receiver.*

[Written across the face in red ink:] Prem. act of 1841. D. S. No. 1209.

That the money so paid by said Frank Smith has been kept and retained by the Government of the United States and has not been paid or tendered either to the said Frank Smith or to this defendant.

That thereafter on the 21st day of January, 1886, the said Commissioner of the General Land Office of the United States wrongfully, unlawfully and fraudulently cancelled said entry and ordered that said land be held for entry.

That said entry was so wrongfully cancelled by said Commissioner upon the false and fraudulent report of a then special agent of the said Land Department, who in his report, filed with said Commissioner in October, 1884, said he had been on said land and found no improvements *thereon* of any description had ever been placed on said land, nor any evidence that any one had ever resided there; that no timber had been cut and no trail could be found leading to the land; also that the entryman had sold the land to one A. N. Spratt on February 13th, 1884, when in truth and in fact
14 said special agent had never been upon said land, and the same had improvements thereon, timber had been cut, and there were trails and roads leading to and over the same.

That said entry was cancelled without any other evidence except said false and fraudulent report of said special agent.

That said entry was so cancelled by said Commissioner without the knowledge of this defendant and without any notice whatever being given to him thereof. And this defendant had no notice or knowledge that said entry had been so cancelled until long after the patent to said land had been issued to Walter R. Glamorgan, as hereinafter alleged.

That thereafter, to wit: on April 19th, 1888, said entry having been cancelled as aforesaid, one Walter R. Glamorgan made a homestead entry in Vancouver land office for said northwest quarter of said section 32, which said homestead entry was thereafter commuted to cash, and thereafter, to wit: on September 21st, 1889, a patent was issued for said land on cash entry to the said Walter R. Glamorgan, and these plaintiffs claim title through mesne conveyances from said Glamorgan to the said plaintiffs.

That at and prior to the time said Glamorgan made said homestead entry and purchased for cash said land as aforesaid, and obtained said patent for said land, he had due notice and knowledge that the said Frank Smith had made said pre-emption entry and had purchased and paid for said land as aforesaid, and that said Smith has sold and conveyed his said interest in said land to this defendant for a valuable consideration, and that said deed was on record in the records of deeds of Cowlitz county, State (then Territory) of Washington; that each and all of the persons through whom the title passed from said Walter R. Glamorgan to these plaintiffs, each and all at the time they acquired title to said land had due notice and knowledge that the said Frank Smith had so entered and purchased said land under the said pre-emption laws and had so sold and conveyed the same for a valuable consideration to this defendant, and that said deed of February 13th, 1884, was recorded in Book "I" at page 81 of records of deeds of Cowlitz county, State (then Territory) of Washington, since March 20th, 1884, and these plaintiffs and each of them took the title to the said land with full notice and knowledge that this defendant was the owner thereof as aforesaid, and they held and hold the legal title to the same as trustees for this defendant.

The defendant, further answering the complaint, avers that prior to the 13th day of February, 1884, he purchased said northwest quarter of said section from the said Frank Smith, and paid him therefor the sum of $800.00, and thereupon, the said Frank Smith on February 13th, 1884, duly executed and delivered to this defendant the deed mentioned in the complaint, which contained full covenants of warranty duly witnessed, acknowledged and certified so as to entitle it to be recorded, and was filed for record by this defendant on the 27th day of February, 1884, with the auditor of said Cowlitz county, Washington. That this defendant at the time he paid for said land and received said deed from Frank Smith had no notice or intimation whatever that Frank Smith had committed any fraud in making said entry and purchasing said land, and this defendant so purchased and paid for said land in good faith, believing the said Frank Smith had complied with the laws of the United States in making said entry and in the purchase of said land, and this defendant is the *bona fide* purchaser of said land, and these plaintiffs and their predecessors in interest took, held and hold the legal title thereof as the trustees of this defendant.

Defendant, further answering the complaint, alleged:—That on

and prior to the — day of ——, 1883, the southeast quarter of section 32 township 9 north of range 4 west Willamette meridian, in Cowlitz county, Washington, was timber land subject to entry and sale as such under the act of Congress of the United States, approved June 3rd, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory." That on said — day of ——, 1883, James M. Radcliffe, a citizen of the United States was entitled to the benefit of the said act of Congress of June 3rd, 1878, and was entitled to purchase 160 acres of land under said act.

That on said date the said James M. Radcliffe duly made application to purchase said southeast quarter of said section 32 under said act of Congress of June 3rd, 1878, as timber land at the land office at Vancouver, Washington (then Territory); the same being the land office for the district of lands in which said premises are situate, and in all things duly complied with the said act, and with the laws of the United States and the rules and regulations of the Land Department to enable him to purchase said land, and paid the fees required of him for that purpose;

That thereafter, on the 20th day of August, 1883, the said James M. Radcliffe having complied with the provisions of said act
17 of June 3rd, 1878, paid to the United States the sum of $400 in payment for said land, and received therefor a duplicate receiver's receipt, of which the following is a copy to wit:

Duplicate. No. 2221.

RECEIVER'S OFFICE AT VANCOUVER,
WASH. TER., *August 20th*, 1883.

Received from James M. Radcliffe of Cowlitz county Wash. Ter. the sum of four hundred dollars and — cents, being in full for the southeast quarter of section No. thirty-two, in township No. nine, north of range No. four west Will. mer., containing one hundred and sixty acres and — hundredths, at $2.50 per acre, fees for allowing entry $10.00 paid.

$400.00. (Signed) A. O. MARSH, *Receiver.*

[Written across the face in red ink:] Act June 2, 1878.

That said money so paid by said James M. Radcliffe has been kept and retained by the Government of the United States, and has not been tendered either to the said James M. Radcliffe or his successors in interest.

That prior to the 13th day of February, 1884, this defendant purchased said southeast quarter of section 32 from the said James M. Radcliffe, and paid him therefor the sum of $800.00, and that thereafter, on the 13th day of February, 1884, the said James M. Radcliffe, by his said deed duly executed and delivered to this defendant duly conveyed the said land by said deed with full covenants of warranty to this defendant, and that thereafter on the 20th day of March, 1884, this defendant caused said deed to be recorded in the records of deeds of Cowlitz county, State (then Territory) of Wash-

ington, on page 98 of Book "I" of records of deeds of said Cowlitz county, said deed being duly executed, witnessed, acknowledged and certified, so as to entitle it to be recorded.

That by said deed this defendant became the owner of said

18 land.

That thereafter, on January 21st, 1886, the Commissioner of the General Land Office of the United States, without any notice to, and without the knowledge of this defendant, wrongfully, unlawfully and fraudulently cancelled the said entry of the said James M. Radcliffe, of the said land under said timber act.

That at the time the said Commissioner so cancelled said entry, he knew and had notice that this defendant had purchased all the right, title and interest, of the said James M. Radcliffe in said land, and that said deed from said Radcliffe to this defendant was recorded as aforesaid.

That prior to the 21st day of February, 1886, a special agent of the United States reported to said Commissioner of the General Land Office that said land was more valuable for agricultural purposes then for the timber thereon; that at the time said special agent claimed to have examined said land the same was covered with a dense growth of large yellow and red fir, cedar timber, and was so densely covered with timber as to be entirely unfit for any kind of cultivation, and was and still is of no value whatever for agricultural purposes; but the said timber was large and fine, and fit for manufacturing into saw-logs and lumber and the chief value of said land at that time was and still is its said timber. That the said special agent that made said report at the time he made said report knew that the said land was so covered with said timber, and that none of said lands could be cultivated on account of said timber, and was entirely unfit for any kind of agricultural purposes, and was of no value for agricultural purposes of any kind, fraudulently made

19 said report to said General Land Office that said land was more valuable for agricultural purposes than for the timber thereon; that said report was made prior to February 21st, 1886, and upon said fraudulent and false report and without any other evidence whatever, the said Commissioner of the Generl Land Office cancelled said entry of said James M. Radcliffe, without any notice to this defendant, and without his knowledge. That this defendant had no notice or knowledge that such report had been made or filed in said Land Office by said special agent until long after said entry was cancelled and until after patent to said land was issued by the United States to Ellis Walker as hereinafter alleged.

That at and prior to the time said special agent made said report, and the time said Commissioner of the General Land Office of the United States cancelled said entry the said Commissioner of the General Land Office and the Secretary of the Interior of the United States held and ruled erroneously that land that was covered with a heavy growth of valuable timber if it could be successfully cultivated after the timber was removed that then such lands were not chiefly valuable for the timber thereon, and *was* not subject to entry as timber land under the said act of June 3rd, 1878, although the

timber on such land might be its chief value and the land might not be at all cultivated in its then condition. That said Commissioner of the General Land Office acted upon said erroneous construction of said act of June 3rd, 1878, in cancelling said entry of said James M. Radcliffe on February 21st, 1886.

That acting under said erroneous construction of said act of June 3rd, 1878, prior to the time said special agent pretended to
20 have examined said land the said Commissioner of the General Land Office instructed all of the special agents of the General Land Office of the Department of the Interior of the United States sent out to examine and report upon entries of land under the laws of the United States to examine timber entries and to report all such entries where the land could be cultivated after the removal of the timber therefrom as land chiefly valuable for agricultural purposes, although the same could not be cultivated in its then condition.

That under such instruction the said special agent pretended to examine said land, and entry of James M. Radcliffe, and made said false, fraudulent and erroneous report, when in truth and in fact and in law, the said land was chiefly valuable for the timber thereon, and totally unfit for any kind of cultivation.

That thereafter, to wit: on April 19th, 1888, said entry having been so cancelled as aforesaid, one Ellis Walker made a homestead entry in said land office of said southeast quarter of said section 32, which said homestead entry was thereafter commuted to cash, and thereafter, on the 25th day of June, 1890, a patent was issued for said land to the said Ellis Walker on said cash entry, and the plaintiffs herein claim title to said land through mesne conveyances from the said Walker to the plaintiffs.

That at and prior to the time said Walker made said homestead entry and purchased said land for cash as aforesaid and obtained said patent for said land, he had due notice and knowledge that said James M. Radcliffe had made said timber entry and had purchased and paid for said land as aforesaid, and that said Radcliffe had so sold and conveyed his said interest and title in said land to
21 this defendant for a valuable consideration, and that said deed from said Radcliffe to this defendant was on record in the records of Cowlitz county as aforesaid.

That each and all of the persons through whom said title passed from the said Ellis Walker to these plaintiffs and each and all of the plaintiffs, at the time they acquired title to said land, had due notice and knowledge that the said James M. Radcliffe had so entered and purchased said land as timber land, and conveyed the same for a valuable consideration to this defendant, and that said deed of February 13th, 1884, was recorded in Book "I" at page 98 of records of deeds in said Cowlitz county, since March 20th, 1884, and those plaintiffs and each of them took the title to said land with full notice and knowledge that this defendant was the owner thereof, and took and held the same as trustees for this defendant.

Defendant, further answering said complaint, avers that prior to the time he purchased said land, and paid for the same, he had no

notice, knowledge, intimation or information whatever that said James M. Radcliffe was not entitled to make such entry of said land, or that said land was not subject to entry under the said act of June 3rd, 1878, but that this defendant in good faith without any such notice, knowledge, intimation or information purchased said land from said James M. Radcliffe and paid the sum of $800.00 to him therefor, believing that the said Radcliffe was the owner thereof, and had a good right to purchase the same under said act of June 3rd, 1878, and that said land was subject to entry and purchase under said act as timber land; and this defendant is the *bona fide* purchaser of said land, and these plaintiffs and their predecessors in interest took and now hold and have held the title to said land in trust
22 for this defendant; and they are now the trustees of this defendant of the title to said land.

The defendant, for a further answer, avers that prior to February 2nd, 1884, James M. Radcliffe, a citizen of the United States, entitled to the benefit of the pre-emption laws of the United States, had under said pre-emption laws entered the southwest quarter of section 32 township 9 north of range 4 west Willamette meridian, Cowlitz county, State of Washington, in the United States land office at Vancouver, Washington, the same being the land office in district in which said land was situated, the said James M. Radcliffe having complied with the provisions of the said pre-emption laws, paid to the United States the sum of $400.00 in payment for said land, and received therefor a duplicate receiver's receipt, bearing date February 12th, 1884, of which the following is a copy, to wit:

Duplicate. No. 2303.

RECEIVER'S OFFICE, VANCOUVER,
W. T., *February 12th*, 1884.

Received of James M. Radcliffe of Cowlitz county Wash. Ter. the sum of four hundred dollars and — cents; being in full for the southwest quarter of section No. thirty-two in township No. nine, north of range No. four west Will. mer., containing one hundred and sixty acres and — hundredths, at $2.50 per acre.

$400.00. (Signed) A. O. MARSH, *Receiver.*

[Written across the face in red ink:] Prem. act 1841. D. S. No. 1210.

That the money so paid by said James M. Radcliffe has been kept and retained by the Government of the United States, and has not been paid or tendered to the said James M. Radcliffe, or this defendant.

That thereafter, on the 21st day of January, 1886, the said Commissioner of the General Land Office of the United States
23 wrongfully, and unlawfully and fraudulently cancelled said entry and ordered that said land be held for entry; that said entry was so wrongfully cancelled by the said Commissioner upon the false and fraudulent report of the then special agent of the said Land Department, who in his report, filed with said Commissioner,

in October 1884, said he had been on said land, and found no improvements *thereon* of any description had ever been placed on said land, and there was no evidence that any improvements had ever been made thereon, or that any one had ever resided thereon; that no trail had been cut and no trail could be found leading to the said land; also that the said entryman had sold the land to one A. N. Spratt on February 13th, 1884, when in truth and in fact said special agent had never been upon said land and the same had improvements thereon, timber had been cut, and there were trails and roads leading to and over the same. Said entry was cancelled without any other evidence except said false and fraudulent report of said special agent; that said entry was so cancelled by said Commissioner without the knowledge of this defendant, and without any notice whatever having been given to him of said proceedings to cancel said entry and this defendant had no notice or knowledge that said entry had so been cancelled until long after the patent to said land had been issued to one Oliver P. Church, as hereinafter alleged.

That thereafter, to wit: on April 19th, 1888, said entry having been cancelled as aforesaid, one Oliver P. Church made a homestead entry in the Vancouver land office for said southwest quarter of section 32, which said homestead entry was thereafter commuted to cash, and thereafter, to wit: on the 25th day of June, 1890,
24 a patent was issued for said land on said cash entry to the said Oliver P. Church, and these plaintiffs claim title through mesne conveyances from said Church to the plaintiff-.

That at and prior to the time said Church made said homestead entry and purchased for cash said land as aforesaid, and obtained patent for said land he had due notice and knowledge that said James M. Radcliffe had made such pre-emption entry, and had purchased said land as aforesaid, and said Radcliffe had sold and conveyed his interest in said land to this defendant for a valuable consideration, and that said deed from said Radcliffe to this defendant was on record in the records of deeds of said Cowlitz county; that each and all of the persons through whom the title passed from said Oliver P. Church to these plaintiffs, each and all at the time they acquired title to said land, had due notice and knowledge, that the said James M. Radcliffe had so entered and purchased said land under the said pre-emption laws, and had so sold and conveyed the same for a valuable consideration to this defendant, and that said deed of February 13th, 1884, was recorded in Book "I" at page 82 of records of deeds of said Cowlitz county, since Feb. 27, 1884, and these plaintiffs and each of them took the title to the said land with full notice and knowledge that this defendant was the owner thereof as aforesaid, and that they held and hold the legal title to the same in trust for this defendant, and that they are now the trustees of the legal title to this land for this defendant.

The defendant, further answering the complaint, avers that prior to the 13th day of February, 1884, he purchased said southwest quarter of said section from the said James M. Radcliffe and paid him

therefor the sum of $800.00 and that said James M. Radcliffe on
25 February 13th, 1884, duly executed and delivered the deed mentioned in the complaint, with full covenants of warranty, duly witnessed, acknowledged and certified so as to entitle it to be recorded, and was filed for record by this defendant on the 27th day of February, 1884, with the auditor of said Cowlitz county, Washington. That this defendant at the time he paid for said land and received said deed from said James M. Radcliffe had no notice or intimation whatever that said James M. Radcliffe had committed any fraud in making said entry and purchasing said land, and this defendant so purchased and paid for said land in good faith, believing the said James M. Radcliffe had complied with the laws of the United States in making said entry and in the purchase of said land. And this defendant is the *bona fide* purchaser of said land, and this defendant is entitled to the same and the plaintiffs, and their predecessors in interest, took, held and hold the legal title thereof as the trustees of this defendant.

Defendant, further answering the complaint, avers that by reason of the premise-, the defendant is the owner of the equitable title to that section 32 described in the complaint, and is entitled to the possession thereof, and the plaintiffs hold the legal title thereof in trust for this defendant, and this defendant is entitled to have a degree that the plaintiffs hold said legal title in trust for this defendant, and that they convey the said land to this defendant by deed duly executed.

Wherefore, defendant prays for a decree that the defendant is the owner and entitled to the possession of said land described
26 in the complaint, and that the plaintiffs hold the legal title thereof in trust for this defendant, and that the defendant have a decree that the plaintiffs execute a proper conveyance conveying said land to this defendant and that in default of such deed of conveyance that said decree stand and be treated as such deed of conveyance; and for such other and further relief as the court may adjudge reasonable in the premises, and for his costs and disbursements herein.

STOTT, BOISE & STOUT AND
T. H. WARD,
Attorneys for Defendant.

27 STATE OF OREGON, }
County of Multnomah, } ss:

I, Robert Osborn, being first duly sworn, depose and say, that I am the agent of this defendant in the above-entitled action, and that the foregoing answer is true as I verily believe, that said defendant is not in the State of Oregon or State of Washington, and for this reason I make this affidavit.

ROBERT OSBRON.

Subscribed and sworn to before me this 11 day of March, 1899.
[SEAL.]
W. L. BOISE,
Notary Public for the State of Oregon.

STATE OF OREGON, } ss:
County of ——. }

Due and legal service of the within answer is hereby accepted in Portland, Multnomah county, Oregon, this 13 day of March, 1899, by receiving a copy thereof, duly certified to as such by Raleigh Stott, attorney for def't.

RUFUS MALLORY,
Attorney for Pltf.

28 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

To the Honorable A. L. Miller, judge of the above-entitled court:

Plaintiffs in the above-entitled suit replying to the answer of defendant herein would most respectfully deny and allege as follows:

I.

Plaintiffs deny each and every allegation contained in defendant's answer herein.

II.

And plaintiffs further replying to defendant's first further and separate answer herein alleges:

That on the 26th day of May, 1883, one Frank Smith, being the same Frank Smith mentioned in defendant's separate answer, made application to the land office at Vancouver then Washington Territory, to purchase the northeast quarter of section 32, township 9 north of range 4 west of Willamette meridian, as timber land under and by virtue of the act of Congress, approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory." That said application to purchase was fraudulent and not made in good faith and was made with the intent to deceive the ministerial officers of the Government of the United States, and to fraudulently acquire the title to said property, that at said date, May 26, 1883, said land was not timber land and was not open to purchase under said act of June 3, 1878, which fact was well known to said Frank Smith at the time he made his said application to purchase. That on the 26th and 27th days of September, 1884, the Government
29 of the United States, by its duly appointed special agent S. P. C. Stubbs, accompanied by C. M. Hogan, B. A. Dietz, citizens of the State then Territory of Washington, went upon said land and examined the same with a view of ascertaining whether the same was or was not timber land and subject to entry under said act of June 3, 1878, that on October 3, 1884, the said special

agent reported to the Commissioner of the General Land Office, transmitting the affidavits of himself and said C. H. Hogan and B. A. Dietz, by all of which affidavits it appeared that said northeast quarter section 32 was not timber land, and was not subject to entry under said act of June 3, 1878. That on October 21, 1884, in accordance with the report of said L. P. C. Stubbs, special agent as aforesaid, the Commissioner of the General Land Office of the United States, suspended action on said entry of said Frank Smith and notified the receiver and register of the land office at Vancouver, Washington, of the fact that action had been suspended upon said entry, and directed said register and receiver to appoint a time for hearing before said register and receiver of evidence, to be offered by the United States and said Frank Smith, and for a final determination of the rights of said Frank Smith to said land by reason of his said pretended entry. That said register and receiver duly notified said Frank Smith of the report of said special agent to the Commissioner of the General Land Office, which report showed said land not to be timber land and duly notified said Frank Smith that action was suspended on his said application, and duly appointed a time and place for hearing testimony to be offered by said Frank Smith and the United States as to the character of said land and as to whether or not said entry should be cancelled, and duly gave the said entryman Frank Smith full and legal notice of the time and place where said hearing would be had by said register and receiver, and duly notified said Frank Smith that in default of an appearance at said hearing his entry would be cancelled. That at the time and place set for said hearing said Frank Smith failed to appear; that said Frank Smith never appeared at said hearing, or at any time after said October, 21, 1884, and never offered any testimony to sustain his said entry or any testimony whatever before said register and receiver, and that on October 17, 1885, the Commissioner of the General Land Office held said entry for cancellation, and directed the register and receiver of the land office at Vancouver, Washington, to notify said Frank Smith that his said entry was held for cancellation, and that he would have sixty days in which to appeal to the Secretary of the Interior from said holding of the Commissioner of the General Land Office, and that if no appeal was taken in said matter that said entry of said Frank Smith would be cancelled. That said register and receiver duly notified said Frank Smith of such holding of said Commissioner of the General Land Office and duly notified said Frank Smith that he would be allowed sixty days in which to appeal from said holding of the Commissioner of the General Land Office to the Secretary of the Interior, and that if no appeal was taken his said entry would be cancelled. That no appeal was taken by said Frank Smith from said order of the Commissioner of the General Land Office holding said entry for cancellation, and that on January 21, 1886, the said Commissioner of the General Land Office duly cancelled said entry of said Frank Smith for the northeast quarter of section 32, township 9 north of range 4 west, and duly held and decided that said land was not then and was not

at the time of the said entry by said Frank Smith, May 26, 1883, timber land, or subject to entry under said act of June 3, 1878, and that said pretended entry by said Frank Smith was fraudulent and void and made solely for the purpose of speculation. And plaintiffs plead said holding and decision by the Commissioner of the General Land Office as to the character of said land as a conclusive bar to the claims of defendant set up in his separate answer herein to said northeast quarter of section 32, township 9, north of range 4 west.

31 And plaintiffs further replying to the 2d further and separate answer and defense of defendant herein allege:

That on the 26th day of May, 1883, Frank Smith, being the same Frank Smith, named in defendant's further and separate answer herein, filed in the land office at Vancouver, Washington, his declaratory statement under the general pre-emption laws of the United States upon the northwest quarter of section 32, township 9 north of range 4 west of the Willamette meridian. That on December 12, 1883, said Frank Smith filed with the register and receiver of said land office at Vancouver, Washington, his notice of intention to make final proof in supplement of his claim to said northwest quarter of section 32, township 9 north of range 4 west, that in pursuance of such notice said final proof was made January 30, 1884, that on September 26 and 27, 1884, the United States, by its duly appointed special agent S. P. C. Stubbs, together with C. M. Hogan and B. A. Dietz, residents of Cowlitz county, Washington, went upon said land and examined the same for the purpose of determining the sufficiency of said final proof and as to whether or not there had been residence and improvement and cultivation of said land as required by law. That on October 6th, 1884 said special agent Stubbs duly reported to the Commissioner of the General Land Office and to the register and receiver of the land office at Vancouver, Washington, transmitting his affidavit and the affidavits of said C. M. Hogan and B. A. Dietz, from which affidavits and report it conclusively appeared that no improvement whatever had been made at any time by said Frank Smith, nor by any other person upon said land; that there had been no cultivation thereof at any time, and that no- even a trail had been cut to or upon said land; that no house had even been built on said land, and there had been no settlement made or attempted; that the entry of said Frank Smith was a fraudulent attempt and was a fraudulent attempt made in conjunction with J. M. Radcliffe to obtain title to the whole of section 32, township 9 north of range 4 west of the Willamette meridian for the purpose of speculation.

32 That in pursuance of such attempt and in carrying out the same said Frank Smith had pretended to sell said land to A. N. Spratt, a non-resident by deed dated February 13, 1884, recorded February 27, 1884, in the records of said Cowlitz county, that on October 21st, 1884, the Commissioner of the General Land Office, in pursuance of the recommendations contained in said report of said special agent, suspended action on said entry of said Frank Smith for said northwest quarter of section 32, township 9

north of range 4 west, and directed the register and receiver of the land office at Vancouver, Washington, to notify the said Frank Smith that action on his said entry was suspended, and to appoint a time and place for a hearing before said register and receiver where testimony could be taken on behalf of said Frank Smith, and of the United States as to the validity of the claim of said Frank Smith.

That in pursuance of said directions from the Commissioner of the General Land Office the said register and receiver did duly appoint a time and place for hearing testimony on the part of said Frank Smith as to the validity of his said claim, and duly and legally notified said Frank Smith of said time and place and duly and legally notified said Frank Smith of the contents, nature and substance of said special agent's report and that the said Frank Smith should appear before said register and receiver at the time and place appointed, with such witnesses and testimony as he desired to offer, and that if he failed to so appear his said entry would be cancelled. That the said Frank Smith did not appear at the time and place appointed by said register and receiver, or at any time, before said register and receiver, and did not offer any proof at said time or at any time after his pre-emption proof made January 30, 1884, as to the validity of his said claim, or to dispute or contradict the facts set out in the report of the said special agent.

That on the 17th day of October, 1885, the Commissioner of the General Land Office, on the showing made by said special agent, held said entry of said Frank Smith for cancellation, and directed the register and receiver of the land office at Vancouver, Washington, to notify said Frank Smith of the fact that said entry
33 was held for cancellation, and advising him that he would be allowed sixty days in which to appeal to the Secretary of the Interior from such decision of the Commissioner; that if no appeal was taken his entry would be cancelled. That on October 27, 1885, said register and receiver duly and legally notified said Frank Smith of said decision of the Commissioner of the General Land Office, and notified the said Frank Smith that his said entry was held for cancellation, and duly and legally notified said Frank Smith of the nature, contents, and substance of the report of said special agent, and duly and legally notified said Frank Smith that he was allowed sixty days in which to appeal from said decision of the Commissioner of the General Land Office, and that if no appeal was taken his said entry would be cancelled. That no appeal was ever taken by said Frank Smith from the said decision of Commissioner of the General Land Office holding said entry for cancellation, and on the 21st day of January, 1886, the said Commissioner of the General Land Office duly cancelled said entry of said Frank Smith for said northwest quarter of section 32 township 9 north of range 4 west of the Willamette meridian, on the ground that the claim of said Frank Smith was wilfully false and fraudulent, and that no settlement, cultivation, or improvement had ever been made on said northwest quarter of section 32, township 9, north of range 4 west, and that the entry of said Frank Smith was made for the purpose of speculation and not in good faith,

And plaintiffs now plead said finding, order and decision of the Commissioner of the General Land Office as a conclusive bar to the claim of defendant set up in defendant's further and separate answer herein. And plaintiffs further allege that said pretended entry by said Frank Smith upon said northwest quarter of section 32 township 9 north range 4 west was false and fraudulent.

34 That no settlement, improvement or cultivation was ever made upon said quarter section by said Frank Smith and that the said false and fraudulent entry was made for the purpose of speculation entirely, and not in good faith under said pre-emption law.

And plaintiff- further replying to 3d further and separate answer and defense of defendant herein alleges:

That on the 26th day of May, 1883, one James M. Radcliffe, being the same James M. Radcliffe mentioned in defendant's separate answer, made application to the land office at Vancouver, Washington, to purchase the southwest quarter of section 32, township 9 north of range 4 west of the Willamette meridian as timber land under and by virtue of the act of Congress, approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory" that said application to purchase was fraudulent and not made in good faith and was made with the intent to deceive the ministerial officers of the Government of the United States and to fraudulently acquire the title to said property. That at said date, May 26, 1883, said land was not timber land and was not open to purchase under said act of June 3, 1878, which fact was well known to said James M. Radcliffe at the time he made his said application to purchase.

That on the 26th and 27th days of September, 1884, the Government of the United States, by its duly appointed special agent S. P. C. Stubbs, accompanied by C. M. Hogan and B. A. Dietz, citizens of the State (then Territory) of Washington went upon said land and examined the same with a view of ascertaining whether the same was or was not timber land and subject to entry under said act of June 3, 1878. That on said October 3, 1884 the said special agent reported to the Commissioner of the General Land Office, transmitting the affidavits of himself and said C. M. Hogan and B. A. Dietz, by all of which affidavits it appeared that said southwest quarter of section 32 was not timber land and was not subject to entry under said act of June 3, 1878, that on October 21, 1884, in accordance with the report of the said Special Agent Stubbs, the Commissioner of the General Land Office of the United States, suspended action on said entry of said James M. Radcliffe and notified the register and

35 receiver of the land office at Vancouver, Washington, of the fact that action had been suspended upon said entry, and directed said register and receiver to appoint a time and place for hearing before said register and receiver of evidence to be offered by the United States and said James M. Radcliffe and for a final determination of their rights of said James M. Radcliffe to said land by reason of his said pretended entry. That said register and receiver duly notified said James M. Radcliffe of the report of said

special agent to the Commissioner of the General Land Office, which report showed said land not to be timber land, and duly notified said James M. Radcliffe that action was suspended on his said application, and duly appointed a time and place for hearing testimony to be offered by said James M. Radcliffe and the United States as to the character of said land and as to whether or not said entry should be cancelled, and duly gave the said entryman James M. Radcliffe full and legal notice of the time and place where said hearing would be had by said register and receiver, and duly notified said James M. Radcliffe that in default of an appearance at said hearing his entry would be cancelled. That at the time and place set for said hearing said James M. Radcliffe failed to appear; that said James M. Radcliffe never appeared at said hearing, or at any time after said October 21, 1884, and never offered any testimony to sustain his entry or any testimony whatever before said register and receiver; and that on October 17, 1885, the Commissioner of the General Land Office held said entry for cancellation, and directed the register and receiver of the land office at Vancouver, Washington, to notify said James M. Radcliffe that his said entry was held for cancellation, and that he would have sixty days in which to appeal to the Secretary of Interior from said holding of the Commissioner of the General Land Office, and that if no appeal was taken in said matter that said entry of said James M. Radcliffe would be cancelled. That said register and receiver duly notified said James M. Radcliffe of such holding of said Commissioner of the General Land Office and duly notified James M. Radcliffe that he would be allowed sixty days in which to appeal from said holding of the Commissioner of the General Land Office to the Secretary of the Interior, and that if no appeal was taken his entry would be cancelled.

36 That no appeal was taken by said James M. Radcliffe from said order of the Commissioner of the General Land Office holding said entry for cancellation, and that on January 21, 1886, the said Commissioner of the General Land Office duly cancelled said entry of said James M. Radcliffe, for the southeast quarter of section 32, township 9 north of range 4 west, and duly held and decided that said land was not then and was not at the time of the said entry by said James M. Radcliffe, May 26, 1883, timber land, or subject to entry under 1878, and that said pretended entry by said James M. Radcliffe was fraudulent and void and made solely for the purpose of speculation.

And plaintiffs plead said holding and decision by the Commissioner of the General Land Office as to the character of said land as a conclusive bar to the claims of defendant set up in his separate answer herein to said southeast quarter of section 32, township 9 north of range 4 west.

37 And plaintiffs further replying to the further and separate answer and defense of defendant herein allege:

That on the 26th day of May, 1883, James M. Radcliffe, being the same James M. Radcliffe named in defendant's further and separate answer herein, filed in the land office at Vancouver, Wash-

ington, his declaratory statement under the general pre-emption laws of the United States upon the southwest quarter of section 32, township 9 north of range 4 west of the Willamette meridian.

That on December 12, 1883, said James M. Radcliffe filed with the register and receiver of said land office at Vancouver, Washington his notice of intention to make final proof in supplement of his claim to said southwest quarter of section 32, township 9 north of range 4 west.

That in pursuance of such notice said final proof was made January 30, 1884, that on September 26 and September 27, 1884, the United States, by its duly appointed special agent S. P. C. Stubbs, together with C. M. Hogan and B. A. Dietz, residents of Cowlitz county, Washington, went upon said land and examined the same for the purpose of determining the sufficiency of said final proof and as to whether or not there had been residence and improvement and cultivation of said land as required by law.

That on October 6th, 1884, said special agent Stubbs duly reported to the Commissioner of the General Land Office and to the register and receiver of the land office at Vancouver, Washington, transmitting his affidavit and the affidavits of said C. M. Hogan and B. A. Dietz from which affidavits and report it conclusively appeared that no improvement whatever had been made at any time by said James M. Radcliffe, nor by any other person upon said land; that there had been no cultivation thereof at any time, and that not even a trail had been cut to or upon said land; that no house had ever been built on said land, and there had been no settlement made or attempted; that the entry of said James M. Radcliffe was fraudulent and was a fraudulent attempt made in conjunction with Frank Smith to obtain title to the whole of section 32, township 9 north of range 4 west of the Willamette meridian for the purpose of speculation. That in pursuance of such attempt and in
38 carrying out the same said James M. Radcliffe had pretended to sell said land to A. N. Spratt, a non-resident, by deed dated February 13, 1884, recorded February 27, 1884, in the records of said Cowlitz county.

That on October 21, 1884, the Commissioner of the General Land Office, in pursuance of the recommendation contained in said report of said special agent, suspended action on said entry of said James M. Radcliffe for said southwest quarter of section 32, township 9 north of range 4 west, and directed the register and receiver of the land office at Vancouver, Washington, to notify the said James M. Radcliffe that action on his said entry was suspended, and to appoint a time and place for a hearing before said register and receiver where testimony could be taken on behalf of said James M. Radcliffe, and of the United States as to the validity of the claim of said James M. Radcliffe. That in pursuance of said directions from the Commissioner of the General Land Office the said register and receiver did duly appoint a time and place for hearing testimony on the part of said James M. Radcliffe as to the validity of his said claim, and duly and legally notified said James M. Radcliffe of said ime and place, and duly and legally notified said James M. Rad-

cliffe of the contents, nature and substance of said special agent's report, and that the said James M. Radcliffe should appear before said register and receiver at the time and place appointed with such witnesses and testimony as he desired to offer, and that if he failed to so appear his entry would be cancelled.

That the said James M. Radcliffe did not appear at the time and place appointed by said register and receiver, or at any time, before said register and receiver, and did not offer any proof at said time or at any time after his pre-emption proof made January 30, 1884, as to the validity of his said claim, or to dispute or contradict the facts set out in the said report of the said special agent.

That on the 17th day of October, 1885, the Commissioner of the General Land Office, on the showing made by said special agent, held said entry of said James M. Radcliffe for cancellation, and directed the register and receiver of the land office at Vancouver, Washington, to notify said James M. Radcliffe of the fact that said entry was held for cancellation, and advising him that he would be allowed sixty days in which to appeal to the Secretary of the Interior from such decision of Commissioner; that if no appeal was
39 taken his entry would be cancelled.

That on October 27, 1885, said register and receiver duly and legally notified said James M. Radcliffe of said decision of the Commissioner of the General Land Office and notified the said James M. Radcliffe that his said entry was held for cancellation, and duly and legally notified said James M. Radcliffe of the nature, contents and substance of the report of said special agent, and duly and legally notified said James M. Radcliffe that he was allowed sixty days in which to appeal from said decision of the Commissioner of the General Land Office, and that if no appeal was taken his said entry would be cancelled. That no appeal was ever taken by said James M. Radcliffe from the said decision of the Commissioner of the General Land Office holding said entry for cancellation, and on the 21, day of January, 1886, the said Commissioner of the General Land Office duly cancelled said entry of said James M. Radcliffe for said southwest quarter of section 32 township 9 north of range 4 west of the Willamette meridian, on the ground that the claim of said James M. Radcliffe was wilfully false and fraudulent and that no settlement, cultivation or improvement had ever been made on said southwest quarter of section 32, township 9, north of range 4 west, and that the entry of said James M. Radcliffe was made for the purpose of speculation and not in good faith.

And plaintiffs now plead said finding, order and decision of the Commissioner of the General Land Office as a conclusive bar to the claim of defendant set up in defendant's further and separate answer herein. And plaintiffs further allege that said pretended entry by said James M. Radcliffe upon said southwest quarter of section 32 township 9 north of range 4 west was false, fraudulent, that no settlement, improvement or cultivation was ever made upon said quarter section by said James M. Radcliffe and that the said false and

fraudulent entry was made for the purpose of speculation entirely and not in good faith under said pre-emption law.

Wherefore, plaintiffs pray judgment as in their complaint.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Plaintiff.

40 STATE OF OREGON, }
County of Multnomah, } *ss:*

I, W. W. Curtis being first duly sworn, say that I am agent of the above-named plaintiffs, and that the statements made in the foregoing reply are true, as I verily believe. I make this affidavit for the reason that neither of said plaintiffs are now within the State of Washington, and all the material facts of the above-entitled action are within my personal knowledge.

W. W. CURTIS, *Agent.*

Subscribed and sworn to before me this 25th day of July, 1899.
[SEAL.] GEORGE TAZWELL,
Notary Public for Oregon.

41 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

Now comes the plaintiffs, by their attorneys, Dolph, Mallory, Simon and Gearin, and demur to all the following portions of defendant's answer herein, to wit:

1st. To all that portion of defendant's answer beginning with the words "defendants further answering" in line 1 of page 4 of said answer, down to and including the words "defendant" in line 23 of page 9 thereof, for the reason that said portion of said defendant's answer does not state facts sufficient to constitute a defense to plaintiffs' complaint.

2d. Beginning with the word "defendant" in line 24 of page 12 of said answer down to and including the word "defendant" in line 19 on page 12 of said answer, for the reason that said portion of defendant's answer does not state facts sufficient to constitute a defense to plaintiffs' complaint.

3d. Beginning with the word "defendant" in line 20 on page 12 of defendant's answer, down to and including the words "this defendant" in line 20 of page 18 of said defendant's answer, for the reason that said portion of said answer does not state facts sufficient to constitute a defense to plaintiffs' complaint.

4th. Beginning with the word "defendant" in line 21 on page 18 of defendant's answer, down to and including the words "executed" in line 18 on page 23 of said answer, for the reason that said portion

of defendant's answer does not state facts sufficient to constitute a defence to plaintiffs' complaint.

DOLPH, MALLORY, SIMON AND GEARIN,
Attorneys for Plaintiffs.

41½ In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

Now at this time this cause having been duly and regularly tried by the court, by stipulation of counsel herein, at Vancouver, Washington, John M. Gearin appearing for the plaintiffs and Stott and Stout and T. H. Ward appearing for the defendant, and the court having heard the evidence offered by counsel on both sides; and listened to their arguments herein, and having taken the said cause under advisement, and the court now being fully advised in the premises, makes the following findings of fact herein:

1.

That section thirty-two, township nine north range four west of the Willamette meridian, in Cowlitz county, State of Washington (then Territory) was surveyed, unoffered public lands of the United States prior to and during the year of 1883.

2.

That on the 26th day of May, A. D. 1883, and prior thereto, the northeast ¼ of said section 32, township nine, north of range 4 west of the Willamette meridian, was timber land subject to entry and sale as such by the United States, under the act of Congress
42 of the United States, approved June 3, 1878, entitled "An act for the sale of timber land of the States of California, Oregon, Nevada, and Washington Territory."

3.

That on said May 26, 1883, Frank Smith, he being a citizen of the United States and entitled to the benefit of the said act of Congress of June 3, 1878, and was entitled to purchase 160 acres of land subject to entry under said act, duly made application to purchase the N. E. ¼ of sec. 32, t'p 9 N., R. 4 W., and filed with the register of the land office at Vancouver, Washington (then Territory), the same being the land office for the district of lands in which said northeast quarter of said section 32, township 9 north range 4 west Wiliamette meridian, was situated, a written statement and application to purchase said land, in duplicate, which statement and application was duly verified by the oath of the applicant before the then register of the said land office.

4.

That touching his said application to purchase, and in his purchase of said northeast quarter of said section 32 from the United States, said Frank Smith and the officers of the Land Department of the United States fully complied with the laws of the United States and the rules and regulations of the Land Department; and all the requirements of said timber and stone act of June 3, 1878, in order to make a legal and valid entry and purchase thereunder were fully complied with.

V.

That thereafter, on the 20th day of August, 1883, no adverse
43 claim having been filed, and said Frank Smith having made the proof covering *covering* his said application to purchase said N. E. ¼ of section 32, t'p 9 N., R. 4 W., and having fully complied with the provisions of said act of June 3, 1878, he the said Frank Smith paid to the United States the sum of $400.00, together with the fees required of him for that purpose, in payment of said land and received therefor a duplicate receiver's receipt, of which the following, is a copy, to wit:—

"Duplicate. 2220.

RECEIVER'S OFFICE AT VANCOUVER,
WASH. TER., *August 20th*, 1883.

Received from Frank Smith of Cowlitz county, Wash. Ter., the sum of four hundred dollars and — cents; being in full for the N. E. ¼ of section No. thirty-two, in township No. nine north of range No. four west Will. mer., containing one hundred and sixty acres and — hundredths, at $2.50 per acre. Fees for allowing entry paid $10.00.

$400.00. (Signed) A. O. MARSH, *Receiver.*"

[Written across the face:] Act June 3rd 1878.

That said entry was duly allowed by the officers of said land office at Vancouver, Wash. Ter. (now State) — issued a certificate for a patent therefor to said Frank Smith.

VI.

That on the 13th day of February, 1884, this defendant A. N. Spratt purchased said N. E. ¼ of said section 32 from said Frank Smith, and paid him therefor the sum of $800.00, and on said date the said Frank Smith, by his said deed, duly conveyed the
44 said land by deed with full covenants of warranty to said defendant A. N. Spratt.

VII.

That thereafter said defendant A. N. Spratt caused said deed from Frank Smith conveying said N. E. ¼ of sec. 32 to be recorded on March 20, 1884, in the records of said Cowlitz county, State (then

Territory) of Washington, at page 81, Book I, records of deeds of said Cowlitz county; and that said deed was duly executed, witnessed, acknowledged and certified so as to entitle it to be recorded.

VIII.

That on October 3, 1884, S. P. C. Stubbs, a special agent of the General Land Office of the United States, reported in writing to the Commissioner of the General Land Office that the land embraced under the entry of said Frank Smith could be successfully cultivated after the timber thereon was removed, and, therefore, not subject to entry under said timber act of June 3, 1878. That said written report was accompanied by the affidavits of C. N. Hogan and B. A. Dietz, who swore that nearly all of said northeast quarter of said section 32 is good agricultural land after the timber is removed.

IX.

That it appeared from the said written report of the said special agent S. P. C. Stubbs that said Frank Smith had made sale of the said N. E. ¼ of said section 32, to A. N. Spratt by warranty deed, dated March 13, 1884, that the price given was $800.00, and that said deed was recorded March 20, 1884.

45 X.

That thereafter, on October 21, 1884, based on the report of said S. P. C. Stubbs, special agent, the Commissioner of the General Land Office suspended action on said entry of said Frank Smith and notified the receiver and register of the land office at Vancouver, Washington, by letter, of the fact that action had been suspended upon said entry, and directed said register and receiver to appoint a time for hearing before said register and receiver of evidence to be offered by the United States and said Frank Smith touching the validity of said entry. That in his said letter notifying the said register and receiver of the suspension of said entry of said Frank Smith said Commissioner directed the said register and receiver of the land office at Vancouver to issue due notice of the time and place of said hearing, informing the entryman of the nature and substance of the special agent's report, and advising him that in default of an appearance at said hearing his entry would be finally cancelled. That in said letter said Commissioner also directed that if said register and receiver had knowledge that the land had been transferred for them to also notify the transferee. That said Commissioner in said letter to the register and receiver also stated that it appeared from the report of said special agent that said Smith had transferred the land by warranty deed, dated March 13, 1884, to the defendant herein A. N. Spratt.

XI.

That thereafter by letter "P," dated October 17, 1885, said
46 Commissioner of the General Land Office of the United States notified said register and receiver that said order for

hearing on the report of Special Agent S. P. C. Stubbs concerning said timber entry of said Frank Smith was rescinded and the entry in question held for cancellation on the showing made in said special agent's report, and directed said register and receiver to notify claimant informing him of the nature and substance of the special agent's report, and advising him that he would be allowed sixty days in which to appeal to the Secretary of the Interior or to show cause why his entry should be sustained, in accordance with circular of instructions of July 31st, 1885, and that if no appeal be taken and he failed to show cause why his entry should be sustained, the same would be finally cancelled.

XII.

That thereafter, on October 29th, 1885, Fred W. Sparling, the register of said land office at Vancouver, Washington, deposited in the post-office at Vancouver, Washington, a registered letter addressed to Frank Smith, Oak Point, Cowlitz county, Washington (now State) Territory. That in said letter as aforesaid said Fred W. Sparling, register of said land office, stated that said timber entry of said Frank Smith is held for cancellation upon the report of said Special Agent S. P. C. Stubbs, further stating that in said report it is alleged that the tract in question is covered with fir, cedar and hemlock trees; that it is good agricultural land, gently rolling, somewhat rough in places, and can be successfully cultivated after the timber is removed. It was also stated in said letter addressed to said Frank Smith, at Oak Point, Cowlitz Co. Washington (now State) Territory, that the said
47 Frank Smith would be allowed sixty days within which to file an appeal from the action hereof to the honorable Secretary of the Interior, or to show cause why his said entry should be sustained, and if he failed to file an appeal or show cause why his entry should be sustained within said time, his entry should be finally cancelled. That said letter of said Fred W. Sparling, register, was never received by said Frank Smith and was thereafter returned to said register of the land office at Vancouver by the postmaster at Oak Point, Washington (now State) Territory, marked "uncalled for."

XIII.

That thereafter, on January 21st, 1886, said Commissioner of the General Land Office of the United States made an order wherein and whereby he pretended to cancel the said entry of the said Frank Smith covering said N. E. ¼ of said section 32, township 9 north R. 4 W. That on said date he notified said register *of* receiver of the land office at Vancouver, Washington, that said entry of said Frank Smith had by him been cancelled.

XIV.

That neither the said Frank Smith, A. N. Spratt, or any one else ever appeared before the United States Land Department in the foregoing proceedings brought by the officers of the said United

States Land Department attacking the validity of said timber entry, and all of the proceedings before the said register and receiver of the land office at Vancouver, Washington, the Commissioner of the General Land Office of the United States, relative to the sus-
48 pension of the said timber entry of said Frank Smith, the holding of the same for cancellation, and the cancellation thereof, were *ex parte;* and no notice or service of notice was had in any of said proceedings, on any one, excepting the mailing of the notice by Fred W. Sparling to said Frank Smith as more fully set forth in paragraph XII hereof.

XV.

That the defendant A. N. Spratt never had any notice or knowledge of any of the aforesaid proceedings brought in the United States Land Office Department attacking the validity of said Frank Smith timber entry covering the N. E. ¼ of said section 32. That at the time of the making of his said report to the Commissioner of the General Land Office regarding the validity of said timber entry of said Frank Smith said special agent S. P. C. Stubbs and said Commissioner of the General Land Office of the United States and the register and receiver of the land office at Vancouver, Washington, and during the time the proceedings were being had in the United States Land Department touching the validity of said timber entry of said Frank Smith, all had actual notice and knowledge that said Frank Smith had sold and conveyed all his right, title and interest in and to the said N. E. ¼ of said section 32 to the defendant A. N. Spratt; that the deed of conveyance of said land from said Smith to said Spratt was duly recorded in the records of deeds of said Cowlitz county, Washington, and that in truth and in fact said Frank Smith had no interest whatever in said land; but that the same belonged to said defendant A. N. Spratt.

49 XVI.

That the said entry of said Frank Smith covering said N. E. ¼ of said section 32 was in all respects legal and valid, and the land included under said entry was at all times herein mentioned, and now is, in fact chiefly valuable for the timber thereon and unfit for cultivation. That the report of the said special agent S. P. C. Stubbs and the order of cancellation of said timber entry of said Frank Smith by the Commissioner of the General — Office were all based upon the misconstruction of said act of June 3, 1878, by the said Commissioner of the General Land Office and the Secretary of the Interior of the United States who held and ruled erroneously that land that was covered with a heavy growth of valuable timber if it could be successfully cultivated after the timber was removed, then that such lands were not chiefly valuable for the timber thereon, and *was* not subject to entry as timber land under said act of June 3rd, 1878, although the timber on such land might be its chief value and the land might not at all be cultivated in its then condition.

XVII.

That on April 9th, 1888, said entry having been so cancelled as aforesaid, one Benjamin L. Henness made a homestead entry in said land office of said N. E. ¼ of said section 32, which said entry was thereafter commuted to cash, and thereafter, on June 25th, 1890, a patent was issued for said land on said cash entry to the said Benjamin L. Henness, and the plaintiffs herein claim title to said land through mesne conveyance from said Henness.

XVIII.

That the plaintiffs were in possession of all of said land
50 at the time of bringing this suit; and have paid the taxes thereon since the 12th day of August, 1890.

XIX.

That on the 26th day of May 1883, and prior thereto, the southeast quarter of said section 32, township 9 north of range 4 west of the Willamette meridian, was timber land subject to entry and sale as such by the United States, under the act of Congress of the United States, approved June 3rd, 1878, entitled "An act for the sale of timber land of the States of California, Oregon, Nevada, and Washington Territory."

XX.

That on said May 26, 1883, James M. Radcliffe, he being a citizen of the United States and entitled to the benefit of the said act of Congress of June 3, 1878, and was entitled to purchase 160 acres of land subject to entry under said act, duly made application to purchase the S. E. ¼ of sec. 32, t'p 9 N. R. 4 W., and filed with the register of the land office at Vancouver, Washington (then Territory), the same being the land office for the district of lands in which said James M. Radcliffe — of said section 32, township 9 north, range 4 west Willamette meridian, was situated, a written statement and application to purchase said land, in duplicate, which statement and application was duly verified by the oath of the applicant before the then register of said land office.

XXI.

That touching his said application to purchase, and in his
51 purchase of said southeast ¼ of said section 32 from the United States, said James M. Radcliffe and the officers of the Land Department of the United States fully complied with the laws of the United States and the rules and regulations of the Land Department; and all the requirements of said timber and stone act of June 3, 1878, in order to make a legal and valid entry and purchase thereunder were fully complied with.

XXII.

That thereafter, on the 20th day of August, 1883, no adverse claim having been filed, and said James M. Radcliffe having made

the proof covering his said application to purchase said S. E. ¼ of section 32, t'p 9 N., R. 4 W., and having fully complied with the provisions of said act of June 3, 1878, he, the said James M. Radcliffe paid to the United States the sum of $400.00, together with the fees required of him for that purpose, in payment of said land and received therefor a duplicate receiver's receipt, of which the following is a copy, to wit:

"Duplicate 2221.

RECEIVER'S OFFICE AT VANCOUVER,
WASH. TER., *August 20th*, 1883.

Received from James M. Radcliffe of Cowlitz county, Wash. Ter., the sum of four hundred dollars and — cents; being in full for the S. E. ¼ of section No. thirty-two, in township No. nine, north of range No. four west Will. mer., containing one hundred and sixty acres and — hundredths, at $2.50 per acre. Fees for allowing entry paid $10.00.

$400.00. (Signed) A. O. MARSH, *Receiver.*"

[Written across the face:] Act of June 3d, 1878.

That said entry was duly allowed by the officers of said land office and the register of said land office at Vancouver, Wash.
52 Ter. (now State) issued a certificate for a patent to said James M. Radcliffe.

XXIII.

That on the 13th day of February, 1884, this defendant A. N. Spratt purchased said S. E. ¼ of said section 32 from said Jas. M. Radcliff-, and paid him therefor the sum of $800.00, and on said date the said Jas. M. Radcliffe, by his said deed, duly conveyed the said land by deed with full covenants of warranty to said defendant A. N. Spratt.

XXIV.

That thereafter said defendant A. N. Spratt caused said deed from Jas. M. Radcliffe conveying said S. E. ¼ of sec. 32, to be recorded on March 20, 1884, in the records of said Cowlitz county, State (then Territory) of Washington, at page 98, Book I, records of deeds of said Cowlitz county; and that said deed was duly executed, witnessed, acknowledged and certified so as to entitle it to be recorded.

XXV.

That on October 3, 1884, S. P. C. Stubbs, a special agent for the General Land Office for the United States, reported in writing to the Commissioner of the General Land Office that the land embraced under the entry of said James M. Radcliffe could be successfully cultivated after the timber thereon was removed, and, therefore, not subject to entry under said timber act of June 3, 1878. That said written report was accompanied by the affidavits of C. N. Hogan and B. A. Tietz, who swore that nearly all of said southeast ¼ of said sec. 32 is good agricultural land after the timber is removed.

XXVI.

53 That it appeared from said written report of the said special agent S. P. C. Stubbs that said James M. Radcliff- had made sale of the said S. E. ¼ of said section 32 to A. N. Spratt by warranty deed, dated March 13, 1884, that the price given was $800.00, and that said deed was recorded March 20, 1884.

XXVII.

That thereafter on October 21, 1884, based on the report of said S. P. C. Stubbs, special agent, the Commissioner of the General Land Office suspended action on said entry of said Jas. M. Radcliffe and notified the receiver and register of the land office at Vancouver, Washington, by letter of the fact that action had been suspended upon said entry, and directed said register and receiver to appoint a time for hearing before said register and receiver of evidence to be offered by the United States and said Radcliffe touching the validity of said entry. That in his said letter notifying the said register and receiver of the suspension of said entry of said James M. Radcliff- said Commissioner directed the said register and receiver of the land office at Vancouver to issue due notice of the time and place of said hearing, informing the entryman of the nature and substance of the special agent's report, and advising him that in default of an appearance at said hearing his entry would be finally cancelled. That in said letter said Commissioner also directed that if said register and receiver had knowledge that the land had been transferred for them to also notify the transferee. That said Commissioner in said letter to the register and receiver also stated that it appeared from the report of said special agent that said Radcliff- had transferred the land by warranty deed, dated March 13, 1884, to the defendant herein A. N. Spratt.

54 XXVIII.

That thereafter by letter "P" dated October 17, 1885, said Commissioner of the General Land Office of the United States notified said register and receiver that said order for hearing on the report of Special Agent S. P. C. Stubbs concerning said timber entry of James M. Radcliffe was rescinded and the entry in question held for cancellation on the showing made in said special agent's report, and directed said register and receiver to notify claimant informing him of tha nature and substance of the special agent's report, and advising him that he would be allowed sixty days in which to appeal to the Secretary of the Interior or to show cause why his entry should be sustained, in accordance with circular of instructions of July 31st, 1885, and that if no appeal be taken and he failed to show cause why his entry should be sustained, the same would be finally cancelled.

XXIX.

That thereafter, on October 29th, 1885, Fred W. Sparling, the register of said land office at Vancouver, Washington, deposited in

the post-office at Vancouver, Washington, a registered letter addressed to James M. Radcliff-, Oak Point, Cowlitz Co., Washington (now State) Territory. That in said letter as aforesaid said Fred W. Sparling, register of the said land office, stated that said timber entry of said James M. Radcliff- is held for cancellation upon the report of said Special Agent S. P. C. Stubbs, further stating that in said report it is alleged that the tract in question is covered wit- fir, cedar and hemlock trees; that it is good agricultural land, gently rolling, somewhat rough in places, and can be successfully cultivated after the timber is removed. It was also stated in said letter addressed to said James M.
55 Radcliff-, at Oak Point, Cowlitz Co., Washington (now State) Territory, that the said James M. Radcliffe would be allowed sixty days within which to file an appeal from the action hereof to the honorable Secretary of the Interior, or to show cause why his said entry should be sustained, and if he failed to file an appeal or to show cause why his entry should be sustained within said time, his entry should be finally cancelled. That said letter of said Fred W. Sparling, register, was never received by said James M. Radcliffe and was thereafter returned to said register of the land office at Vancouver by the postmaster at Oak Point, Washington (now State) Territory, marked "uncalled for."

XXX.

That thereafter, on January 21st, 1886, said Commissioner of the General Land Office of the United States made an order wherein and whereby he pretended to cancel the said entry of the said James M. Radcliffe, covering said S. E. ¼ of said section 32, township 9, N. R. 4 W. That on said date he notified said register and receiver of the land office at Vancouver, Washington, that said entry of said James M. Radcliffe had by him been cancelled.

XXXI.

That neither the said James M. Radcliffe, A. N. Spratt, or any one else ever appeared before the United States Land Department in the foregoing proceedings brought by the officers of the said United States Land Department attacking the validity of said timber entry, and all of the proceedings before the said register and receiver of the land office at Vancouver, Washington, the Commissioner of the General Land Office of the United States, rel-
56 ative to the suspension of the said timber entry of said James M. Radcliff-, the holding of the same for cancellation, and the cancellation thereof, were *ex parte;* and no notice or service of notice was had in any of said proceedings, on any one except the mailing of the notice by Fred W. Sparling to said James M. Radcliffe as more fully set forth in paragraph XIX hereof.

XXXII.

That the defendant A. N. Spratt never had any notice or knowledge of any of the aforesaid proceedings brought in the United —

Land Office Department attacking the validity of said Jas. M. Radcliff- timber entry covering the S. E. ¼ of said section 32. That at the time of the making of his said report to the Commissioner of the General Land Office regarding the validity of said timber entry of said James M. Radcliff said Special Agent S. P. C. Stubbs and said Commissioner of the General Land Office of the United States and the register and receiver of the land office at Vancouver, Washington, and during the time the proceedings were being had in the United States Land Department touching the validity of said timber entry of said James M. Radcliffe, all had actual notice and knowledge that said James M. Radcliff- had sold and conveyed all of his right, title and interest in and to said southeast ¼ of said section 32 to the defendant A. N. Spratt; that the deed of conveyance of said land from said Radcliffe to said Spratt was duly recorded in the records of deeds of said Cowlitz county, Washington, and that in truth and in fact said Radcliff- had no interest whatever in said lands; but that the same belonged to said defendant A. N. Spratt.

XXXIII.

57 That the said entry of said Jas. M. Radcliff- covering said S. E. ¼ of said section 32 was in all respects legal and valid, and the land included under said entry was at all the times herein mentioned, and now is, in fact chiefly valuable for the timber thereon and unfit for cultivation. That the report of the said special agent S. P. C. Stubbs and the order of cancellation of said timber entry of said Radcliff- by the Commissioner of the General Land Office were all based upon the misconstruction of said act of June 3, 1878, by the said Commissioner of the General Land Office and the Secretary of the Interior of the United States who held and ruled erroneously that land that was covered with a heavy growth of valuable timber if it could be successfully cultivated after the timber was removed, then that such lands were not chiefly valuable for the timber thereon, and *was* not subject to entry as timber land under said act of June 3rd, 1878, although the timber on such land might be its chief value and the land might not at all be cultivated in its then condition.

XXXIV.

That on April 9th, 1888, said entry having been so cancelled as aforesaid, one Ellis Walker made a homestead entry in said land office of said S. E. ¼ of said section 32, which said entry was thereafter commuted to cash, and thereafter, on June 25th, 1890, a patent was issued for said land on said cash entry to the said Ellis Walker, and the plaintiffs herein claim title to said land through mesne conveyance from the said Walker.

XXXV.

58 That the plaintiffs were in possession of all of said land at the time of bringing this suit; and have paid the taxes thereon since the 12th day of August, 1890.

36.

That on the 26th day of May, 1883, James M. Radcliffe filed in the United States land office at Vancouver, Washington, his pre-emption declaratory statement for the southwest quarter of section thirty-two, township nine north, range four, west of the Willamette meridian, allegeing settlement thereon on

37,

April 20th, 1883; that on December 12th, 1883, said James M. Radcliffe filed in the office of the register of the land office at Vancouver, Washington, his notice of intention to make final proof in support of his pre-emption claim to said southwest one-fourth of section thirty-two, township nine, north, range four, west of Willamette meridian, and that due publication of the filing of said notice on intention was made in accordance with law by said register of the land office at Vancouver, Washington, appointing Wednesday, January 30th, 1884, before the probate court at Oak Point, Washington Territory, as the time and place for hearing said final proof.

38.

That on said January 30th, 1884, the said James M. Radcliffe appeared before the probate court at Oak Point, Washington Territory, accompanied by two witnesses, Frank Smith and George H. Heather, whose testimony was taken by said probate court in support of said pre-emption claim, which testimony was reduced to writing and forwarded to the office of the register of the land office at Vancouver, Washington, where the same was filed February 12, 1884.

59 39.

That on said February 12, 1884, the said James M. Radcliffe paid to the register of the land office at Vancouver, Washington, the sum of four hundred dollars, and the said register thereupon issued to said James M. Radcliffe his certificate in words as follows, to wit:

"No. 2300.

LAND OFFICE AT VANCOUVER, W. T., *February 2d*, 1884.

It is hereby certified that, in pursuance of law, James M. Radcliffe residing at Oak Point, in Cowlitz county, Washington Ter., on this day purchased of the register of this office the southwest quarter of section No. 32 in township No. 9 north of range No. 4 west of the Will. principal meridian, Wash. Ter. containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars and — cents, for which the said James M. Radcliffe has made payment in full as required by law. Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said James M. Radcliffe shall be entitled to receive a patent for the lot above described.

(Signed) FRED W. SPAILING, *Register*."

40.

That on October 6th, 1884, S. P. C. Stubbs, special agent for the General Land Office reported said entry of James M. Radcliffe as being fraudulent and filed in the office of the register of the land office at Vancouver, Washington, his "report of fraudulent claim or entry," together with the affidavits of C. M. Hogan and Benjamin I. Deitz as to the fraudulent nature of said entry of said
60 James M. Radcliffe;

41.

That on October 21st, 1884, the Commissioner of the General Land Office suspended action on said entry of James M. Radcliffe and directed the register and receiver of the land office at Vancouver, Washington, to appoint a time for hearing, at which the said James M. Radcliffe might appear and defend the validity of his claim and to notify said James M. Radcliffe of the time set for hearing and the nature of said special agent's report, and that in default of an appearance at said hearing by said James M. Radcliffe his entry would be cancelled. Said Commissioner of the General Land Office further notified said register and receiver of the land office at Vancouver, Washington, that James M. Radcliffe had deeded said land to A. N. Spratt and directed said register and receiver to notify said A. N. Spratt of said hearing;

42.

That on October 17th, 1885, the Commissioner of the General Land Office rescinded said order of October 21, 1884, and said entry of James M. Radcliffe was held for cancellation and the register and receiver of the land office at Vancouver, Washington, was directed to notify said James M. Radcliffe of the nature and contents of the special agent's report, and that he would be allowed 60 days in which to appeal to the Secretary of the Interior, and that if no appeal was taken his entry would be cancelled;

43.

That on October 27th, 1885, the register and receiver of the land office at Vancouver, Washington, deposited in the post-office
61 at Vancouver, Washington, postage prepaid, a duly registered letter, directed to James M. Radcliffe, Oak Point, Cowlitz Co., Washington, the last known address of said James M. Radcliffe, which letter duly notified said James M. Radcliffe of the contents of said order of the Commissioner of the General Land Office, and that the said James M. Radcliffe was allowed sixty days in which to appeal to the Secretary of the Interior,

44.

That no appeal was ever taken by said James M. Radcliffe from the said decision of said Commissioner of the General Land Office holding said entry for cancellation, and on the 21st day of January, 1886, the said Commissioner of the General Land Office duly cancelled said entry of said James M. Radcliffe for said southwest

quarter of said section thirty-two, township nine, north, range four, west, on the ground that said entry of said James M. Radcliffe was willfully false and fraudulent and that no settlement, cultivation or improvement had ever been made on said southwest quarter of section thirty-two, township nine, north, range four west, and that the entry of said James M. Radcliffe was for the purpose of speculation, and not in good faith;

45.

That upon the cancellation of said entry of said James M. Radcliffe on said January 21st, 1886, said southwest quarter of said section thirty-two, township nine, north range four west, was restored to the public domain, and subject to entry by the first legal applicant;

That on the 25th day of June, 1890, the Government of the United States duly issued to Oliver P. Church its patent for the said southwest quarter of section thirty-two, township nine, north range four
62 west, which patent was received by said Oliver P. Church and recorded August 21st, 1890, in the records of deeds, Cowlitz county, State of Washington;

46.

That plaintiffs deraign title to said southwest quarter of section thirty-two, township nine north, range four west, through an unbroken chain of conveyances from said Oliver P. Church and were in possession of said property at the time of the beginning of this suit, and have paid taxes thereon continuously since August 12th, 1890.

47.

That on the 26th day of May, 1883, Frank Smith filed in the United States land office at Vancouver, Washington, his pre-emption declaratory statement for the northwest quarter of section 32, township nine north, range four west of the Willamette meridian, alleging settlement thereon on April 20th, 1883;

48.

That on December 12th, 1883, said Frank Smith filed in the office of the register of the land office at Vancouver, Washington, his notice of intention to make final proof in support of his pre-emption claim to said northwest one-fourth of section thirty-two, township nine north, range four west of the Willamette maridian, and that due publication of the filing of said notice of intention was made in accordance with law by said register of the land office at Vancouver, Washington, appointing Wednesday, January 30th, 1884, before the probate court at Oak Point, Washington Territory, as the time and place for hearing said final proof;

63 49.

That on said January 30th, 1884, the said Frank Smith appeared before the probate court at Oak Point, Washington Territory, accom-

panied by two witnesses, Frank Smith and George H. Heather, whose testimony was taken by said probate court in support of said pre-emption claim, which testimony was reduced to writing and forwarded to the office of the register of the land office at Vancouver, Washington, where the same was filed February 2, 1884.

50.

That on said February 2, 1884, the said Frank Smith, paid to the register of the land office at Vancouver, Washington, the sum of four hundred dollars, and the said register thereupon issued to said Frank Smith his certificate in words as follows, to wit:

"No. 2300.

LAND OFFICE AT VANCOUVER, W. T., *February 2d*, 1884.

It is hereby certified, that, in pursuance of law, Frank Smith residing at Oak Point, in Cowlitz county, Wash. Ter., on this day purchased of the register of this office the northwest quarter of section No. 32 in township No. 9 north of range No. 4 west of the Will. principal meridian, Wash. Ter. containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars and — cents, for which the said Frank Smith has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Frank Smith shall be entitled to receive a patent for the lot above described.

(Signed) FRED W. SPAILING, *Register*."

64

51.

That on October 6th, 1884, S. P. C. Stubbs, special agent of the General Land Office reported said entry of Frank Smith as being fraudulent and filed in the office of the register of the land office at Vancouver, Washington, his "Report of fraudulent claim or entry," together with the affidavits of C. M. Hogan and Benjamin I. Deitz as to the fraudulent nature of said entry of said Frank Smith;

52.

That on October 21st, 1884, the Commissioner of the General Land Office suspended action on said entry of Frank Smith and directed the register and receiver of the land office at Vancouver, Washington, to appoint a time for hearing at which the said Frank Smith might appear and defend the validity of his claim and to notify said Frank Smith of the time set for hearing and the nature of said special agent's report, and that in default of an appearance at said hearing by said Frank Smith his entry would be cancelled said Commissioner of the General Land Office further notified said register and receiver of the land office at Vancouver, Washington, that Frank Smith has deed- said land to A. N. Spratt and directed said register and receiver to notify said A. N. Spratt of said hearing;

53.

That on October 17th, 1885, the Commissioner of the General Land Office rescinded said order of October 21, 1884, and said entry of Frank Smith was held for cancellation and the register and receiver of the land office at Vancouver, Washington, was directed to notify said Frank Smith of the nature and contents of the
65 special agent's report, and that he would be allowed 60 days in which to appeal to the Secretary of the Interior, and that if no appeal was taken his entry would be cancelled,

54.

That on October 27th, 1885, the register and receiver of the land office at Vancouver, Washington, deposited in the post-office at Vancouver, Washington, postage prepaid, a duly registered letter directed to Frank Smith, Oak Point, Cowlitz Co., Washington, the last known address of said Frank Smith, which letter duly notified said Frank Smith of the contents of said order of the Commissioner of the General Land Office, and that the said Frank Smith was allowed sixty days in which to appeal to the Secretary of the Interior;

55.

That no appeal was ever taken by said Frank Smith from the said decision of said Commissioner of the General Land Office holding said entry for cancellation, and on the 21st, day of January, 1886, the said Commissioner of the General Land Office duly cancelled said entry of said Frank Smith for said northwest quarter of said section thirty-two, township nine, north, range four west, on the ground that said entry of said Frank Smith was wilfully false and fraudulent and that no settlement, cultivation or improvement had ever been made on said northwest quarter of section thirty-two, township nine, north, range four west, and that the entry of said Frank Smith was for the purpose of speculation, and not in good faith;

56.

66 That upon the cancellation of said entry of said Frank Smith on said January 21st, 1886, said northwest quarter of said section thirty-two, township nine, north range four west, was returned to the public domain, and subject to entry by the first legal applicant;

57.

That on the 21 day of September 1899 the Government of the United States duly issued to Walter R. Glenmorgan its patent for the said northwest quarter of section thirty-two, township nine, north, range four west, which patent was received by said Walter R. Glenmorgan and recorded August 21st, 1890; in the records of deeds, Cowlitz county, State of Washington;

58.

That plaintiffs deraign title to said northwest quarter of section

thirty-two, township nine, north, range four, west, through an unbroken chain of conveyances from said Walter R. Glenmorgan and were in possession of said property at the time of the beginning of this suit, and have paid taxes thereon continuously since August 12th, 1890.

67 As conclusions of law the court finds:

1.

That plaintiffs are the owners in fee-simple and in possession of the northwest quarter and the southwest quarter of section thirty-two, township nine, north, range four west Willamette meridian.

2.

That the deed from Frank Smith to A. N. Spratt of date February 13th, 1884, recorded on page 97 of Book I, records of deeds of said Cowlitz county, Washington, on the 20th day of March, 1884, is a cloud on plaintiffs title to said northwest quarter, section thirty-two, township nine, north range four west, and plaintiffs are entitled to have the same cancelled.

3.

That the deed from James M. Radcliffe to A. N. Spratt of date February 13, 1884, recorded on page 82, Book "I" records of deeds of Cowlitz county, Washington, March 20th, 1884, is a cloud on plaintiff's title to said southwest quarter of section thirty-two, township nine, north range four west Willamette meridian, and plaintiffs are entitled to have the same cancelled.

4.

That plaintiffs are entitled to a judgment herein for their costs and disbursements.

5.

That defendant is the equitable owner and entitled to the possession of the northeast quarter and the southeast quarter of said section thirty-two, (32) township nine (9), north, range four (4) west of the Willamette meridian, Cowlitz county, State of Washington, and that the plaintiffs hold the legal title thereof in trust for this defendant.

68 6.

That the defendant have a decree that the plaintiffs execute a proper deed conveying said northeast quarter and said southeast quarter of said section thirty-two (32) within thirty days to this defendant, and that in default of such deed of conveyance that this decree stand and be treated as and for such deed of conveyance.

July 17, 1900.

A. L. MILLER, *Judge.*

69 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

Now come plaintiffs by their attorneys Dolph, Mallory, Simon and Gearin and except to the following findings of fact made by the court herein, to wit:

Numbers 2–4–5–6–9–14–15–16–19–20–21–22–23–31–32– and 33.

And plaintiffs further except to the following conclusions of law, to wit:

Conclusions of law Nos. five (5) and six (6).

And plaintiffs now move the court that plaintiffs' said exceptions be now allowed.

July 17, 1900.

A. L. MILLER, *Judge.*

70 DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

The court having heretofore heard the testimony in the above-entitled cause and filed its findings of fact and conclusions of law herein, and being now fully advised in the premises;

It is ordered, considered, adjudged, and decreed, that plaintiffs are the owners in fee-simple and are in possession of the northwest quarter and the southwest quarter of section thirty-two, township nine, north, range, four, west of the Willamette meridian, and that defendant has no title therein; and that the deed of date February 13, 1884, recorded on page 97 of Book I, records of deeds of Cowlitz county, State of Washington, on the 20th day of March, 1884, is a *could* on plaintiffs' title to said northwest quarter, section thirty-two, township nine, north, range four, west, and the same is hereby cancelled; and that the deed of date February 13, 1884, recorded on page 82, Book I, records of deeds of Cowlitz county, State of Washington, on March 20, 1884, is a cloud on plaintiffs' title to said southwest quarter of section thirty-two, township nine, north, range four, west of the Willamette meridian, and the same is hereby cancelled.

It is further ordered, adjudged and decreed that the defendant is the equitable owner and entitled to the possession of the northeast quarter and the southeast quarter of section thirty-two, (32) township nine (9), north range four, (4) west of the Willamette meridian, in Cowlitz county, State of Washington, and that the plaintiffs hold the
71 legal title thereof in trust for this defendant; and that the plaintiffs execute a proper deed conveying said northeast quarter and said southeast quarter of said section thirty-two, (32) township nine, (9) north, range four, (4) west of the Willamette meridian within thirty days to this defendant, and that in default of such

deed of conveyance, that this decree stand and be treated as and for such deed of conveyance.

July 17, 1900.

A. L. MILLER, *Judge.*

72 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JUNIOR, CHAS. STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs and Appellants,
vs.
A. N. SPRATT, Defendant and Respondent.

To A. N. Spratt, defendant above named, and to Stott and Stout and T. H. Ward, his attorneys:

You are hereby notified that the plaintiffs in the above-entitled suit hereby appeal to the supreme court of the State of Washington from all that portion of the judgment and decree in the above-entitled suit made by the court on the 17th day of July 1900, and duly entered on the 20th day of July 1900, which portion of said decree hereby appealed from reads as follows:—

"It is further ordered, adjudged and decreed that the defendant is the equitable owner and entitled to the possession of the northeast quarter and the southeast quarter of section thirty-two (32), township nine (9), north, range four (4), west, of the Willamette meridian in Cowlitz county, State of Washington, and that the plaintiffs hold the legal title thereof in trust for this defendant and that the plaintiffs execute a proper deed conveying said northeast quarter and said southeast quarter of said section thirty-two (32), township nine, north, range four (4) west of the Willamette meridian, within 30 days to this defendant and that in default of such deed of conveyance that this decree stand and be treated as and for such deed of conveyance."

DOLPH, MALLORY, SIMON & GEARIN,
Att'ys for Plaintiffs and Appellants.

73 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee-, Plaintiffs and Appellants,
vs.
A. N. SPRATT, Defendant and Respondent.

Bond on Appeal.

Know all men by these presents: That we, David Whitney, Jr., Charles Stinchfield, and James A. Remick, trustee-, plaintiffs and appellants, and The United States Fidelity & Guaranty Company of Baltimore, Maryland as surety, are held and firmly bound unto A. N. Spratt, defendant and respondent above named, in the full

sum of five hundred dollars ($500); for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, firmly by these presents.

Signed by us and sealed with our seals this 15th day of Sept., 1900.

The condition of the above obligation is such, that, whereas, the plaintiffs and appellants above named have appealed to the supreme court of the State of Washington from the judgment and decree of the above-entitled court, made on the 17th day of July, 1900, and whereas, the above-entitled court has by order heretofore duly made fixed the amount of the bond on appeal at the sum of five hundred dollars; now, therefore, if the said appellants shall pay all costs and damages that may be awarded against them on the appeal or on dismissal hereof, not exceeding the sum of five hundred dollars, and if the said appellants shall satisfy and perform the judgment or order appealed from in case it shall be affirmed, or any judgment or order which the supreme court may render or make or
74 order to be rendered or made by the superior court, then this obligation to be null and void, otherwise to be and remain in full force and effect.

In witness whereof, the parties hereto have set their hands and seals this 15th day of September, 1900.

WHITNEY, STINCHFIELD & REMICK, [SEAL.]
By W. W. CURTISS, *Ag't.* [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY COMPANY. [SEAL.]
J. L. HARTMAN, [SEAL.]
N. D. SIMON, *Its Attorneys-in-fact.*

Witness:

KARL TWELY.

75 STATE OF WASHINGTON, } ss:
County of Cowlitz, }

I, I. N. Beighle, clerk of the superior court, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in the above-entitled cause as I have been directed by the appellant to transmit to the Supreme Court.

In testimony whereof I have hereunto set my hand and the seal of said superior court this 19th day of September, 1900.

[SEAL.] I. N. BEIGHLE, *Clerk.*

Endorsement: Filed Sep. 28 1900 C. S. Reinhart clerk by R. B. Crandall deputy.

76 In the Superior Court of the State of Washington for the County of Cowlitz.

WHITNEY, STINCHFIELD, & REMICK, Plaintiffs,
vs.
A. N. SPRATT, Defendant.
} No. 3744.

It is hereby stipulated by and between the parties to the above-entitled suit that the statement of facts on appeal shall be made up by attaching together copies of the following papers, to wit:

1st. The stipulation filed in this suit on the 5th day of June, 1900, Exhibit "M."

2nd. The certified copies made by the Commissioner of the General Land Office filed in this case, marked Exhibits "A" and "B."

3rd. The letters filed in this suit marked Exhibits "E," "F," "H" and "I."

4th. The deposition of A. N. Spratt taken in this suit.

5th. Two warranty deeds, Defendant's Exhibits "2" and "3," together with a copy of the oral testimony taken at the trial of this suit, and that said statement of facts so made up shall be deemed full and complete, and in compliance with every provision of law in reference to the appeal to the supreme court, and that all objections to the same for informality or insufficiency are hereby waived.

It is further stipulated by and between the parties to the above-entitled suit that copies of said Exhibits "A, B" and letters filed in this suit marked Exhibits "E," "F," "H" and "I" are correct, full, true and complete transcript- of all the proceedings of the land office at Vancouver, Washington, and of the General Land Office, Department of the Interior, Washington, D. C., touching timber-land entry of Frank Smith for the northeast quarter of section 32, township 9 north of range 4 west of the Willamette meridian, and of the timber-land entry of James Radcliffe for the southeast quarter of section 32, township 9 north of range 4 west of the Willamette meridian; and the other exhibits mentioned in the stipulation filed in this suit on the 5th of June, 1900, marked Exhibit "M," and not incorporated herein are left out of this statement of facts by the agreement of counsel herein for the reason that the said exhibits refer entirely to, and concern certain pre-emption entries of said Frank Smith and James Radcliff-, and nothing appears in said exhibits so left out relating to or concerning said timber entries.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Plaintiff.
STOTT & STOUT AND T. H. WARD,
Attorneys for Defendant.

77 In the Superior Court of the State of Washington for the County of Cowlitz.

WHITNEY, STINCHFIELD, & REMICK, Plaintiff-,
vs.
A. N. SPRATT, Defendant.

Statement of Facts.

Be it remembered that on the trial of the above-entitled suit had before the court on the 5th day of January, 1900, the following proceedings were had, to wit:

Plaintiffs to sustain the issues on their part filed the stipulation a copy of which is hereto attached and marked Exhibit M, also the certified copies from the General Land Office, marked Exhibits A, B, copies of which are hereto attached; and also the letters marked Exhibits E, F, H, and I, copies of which are hereto attached; and thereupon rested their case.

Whereupon the defendant introduced the testimony of A. N. Spratt, a copy of which is hereto attached, and marked Defendant's Exhibit I, and likewise the two warranty deeds, hereto attached, marked Defendant's Exhibits 2 and 3.

Whereupon the following testimony was taken and the following proceedings were had to wit:

78 In Superior Court, Cowlitz County, State of Washington.

DAVID WHITNEY, JR., ET AL., Plaintiffs,
vs.
A. N. SPRATT, Defendant.

Appearances.

John M. Gearin, att'y, for pl'ff.
Raleigh Stott, T. H. Ward and Geo. C. Stout, att'ys for def't.

Tried at Vancouver, Clarke county, Wash., on the 5th day of January, A. D. 1900, before his honor, Judge A. L. Miller.

COURT: A stipulation offered filed.

All exhibits mentioned in the stipulation and offered and admitted are in evidence, and are marked from "A" to "L," the deeds mentioned in the stipulation to the Defendant's Exhibit- 1, 2, 3, and 4.

C. M. HOGAN, called as witness on behalf of defendant, being first duly sworn, testifies as follows:

Direct examination by RALEIGH STOTT:

Q. 1. Whereabouts do you live, Mr. Hogan?
A. 1. I live in Cowlitz county.
Q. 2. How long have you lived in Cowlitz county?
A. 2. I think about twenty-five years.
Q. 3. What, if any official position did you hold in that county?

A. 3. I have been a justice of the peace for twelve or fourteen years.

Q. 4. Was you ever a surveyor?

A. 4. I have surveyed a great deal, but not in the way of any official capacity.

Q. 5. You may state, Mr. Hogan, whether or not you examined the northeast quarter of section thirty-two, township nine, north of range 4 west, Cowlitz county, Washington, in company with Special Agent Stubbs; and the southeast quarter of the same section, township and range, that is in company with special agent of the United States, Stubbs, about September or October, 1884?

A. 5. I did.

79 Q. 6. In company with whom did you examine these tracts?

A. 6. With Mr. Stubbs and Mr. Dietz (or Deats).

Q. 7. With B. F. Dietz?

A. 7. Yes, sir; B. F. Dietz.

Q. 8. Where is B. F. Dietz now at?

A. 8. He went to Minnesota, or Colorado, I believe.

Q. 9. I understand he is dead.

A. 9. Yes, sir; so I am told.

Q. 10. Do you know his wife?

A. 10. I am slightly acquainted with her.

Q. 11. Now what is the character of that land with reference to the timber upon it?

Mr. GEARIN: I object to any testimony being received at this time touching the character of the land, for the reason the same is incompetent and immaterial and because the records introduced show that the Land Department passed upon that question as a question of fact, and the decision of the Land Department is conclusive.

COURT: The court will permit the testimony and the questions may be argued at the final submission. The question may be asked as to the quality of the timber.

A. 11. The timber is excellent. It is as good as any in that section of the country.

Q. 12. In Cowlitz county?

A. 12. Yes, sir, Cowlitz county.

Q. 13. About how many feet of saw timber would you estimate that is on the land?

A. 13. At the time we examined it, we measured off what we considered an ordinary acre of land and estimated the amount that each tree would give, and in calculating found we could get considerable over two hundred thousand feet.

Q. 14. State if about that time, or since, you have examined a great deal of timber land for the Government of the United States?

A. 14. I have examined a number of tracts, perhaps sixty or seventy.

80 Q. 15. In what part of the country?

A. 15. In that part: Cowlitz and Wahkiakum counties.

Q. 16. What would you say about that being a quarter section or

half section of good timber; was there any better timber in that part of the country?

A. 16. It is as good as any I ever examined. In fact, there is none better in that part of the country.

Q. 17. Well what would you say about the quality?

A. 17. It is large to the acre.

Q. 18. Now is that land especially valuable for cultivation or timber?

A. 18. No; no land there but what is covered with timber. It would have to be cleared in order to be cultivated.

Q. 19. Well, after it is cleared, what would you say; is it good for agricultural purposes, or not?

A. 19. Yes, after it is cleared it is worth that. It would have to be cleared first.

Q. 20. Well, then, what would you say as to its chief value in its then condition, when you examined it,—its timber or soil for cultivation?

A. 20. In its existing condition I should say timber value.

Q. 21. Chief value?

A. 21. Chief value, yes sir.

Q. 22. State if you informed Agent Stubbs that you would testify that the claimant took the northeast quarter of said section for speculation?

Mr. GEARIN: Objected to as incompetent.

Mr. STOTT:

Q. 23. Did you give Stubbs any reason to believe that you would so testify?

Mr. GEARIN: Objected to as incompetent.

Mr. STOTT:

Q. 24. Did you have any intimation or reason to think that the claimant, Frank Smith, had taken up that claim for speculation?

A. 24. I had no reason to think so, because I did not know Frank Smith, or any of them, or any of the parties, but my knowledge was simply of the land as I examined it.

81 Q. 25. Had you ever had any intimation that Frank Smith had taken that timber claim for speculation?

Mr. GEARIN: Objected to as incompetent.
COURT: Objection sustained.

Mr. STOTT:

Q. 26. Now, what would you say about the southeast quarter taken by James Radcliffe. Had you any reasons to believe that Radcliff- took the land or claim for speculation?

Mr. GEARIN: Objected to as before.
COURT: The objection is overruled.

WITNESS:

A. 26. I know nothing concerning them whatever. I know none of the parties, either before or since I examined the land. My knowledge, as stated before, is simply of the land as I examined it.

Q. 27. Did you say you examined the southeast corner also?

A. 27. I examined the whole section.

Q. 28. All about the same?

A. 28. Yes, sir.

Q. 29. And its chief value was for timber?

A. 29. For timber in the condition it was when I examined it.

Q. 30. In its then condition?

A. 30. Yes, sir.

Cross-examination, conducted by Mr. GEARIN:

Q. 31. Mr. Hogan, you are a witness at the solicitation of Mr. Stubbs to examine this land, and signed the affidavit as to the character of the land, did you not, at that time?

A. 31. Yes, sir; I was a witness in the examination of that land at the instance of Mr. Stubbs.

Q. 32. You went on the land with Mr. Stubbs for the purpose of becoming a witness as to its character, that is, whether it was agricultural or not?

A. 32. Yes, sir.

Q. 33. It was for that purpose you went there?

82 A. 33. Yes, sir.

Q. 34. There is a certified copy in the record in this case reported to be your affidavit. Have you read it?

A. 34. I read one. I don't know whether it is the one you refer to or not.

Q. 35. I will ask you if that affidavit is like this: Regarding these two quarter sections of timber land, and speaking of the soil you described it as "a clay land, generally rolling, and covered with a heavy growth of fir, cedar and hemlock trees," and said, "I consider this good agricultural land," and "could be profitably cultivated after the timber is removed." Did you say that?

A. 35. I did.

Q. 36. Was that true?

A. 36. I believe so.

Redirect examination, conducted by Mr. STOTT:

Q. 37. Your idea is in order to be cultivated properly the timber would have to be taken off?

A. 37. After the timber is cut off it would become good land to cultivate.

Q. 38. But, until it is cleared it is not fit to cultivate?

A. 38. Of course not.

Q. 40. What kind of timber, that is, was the timber valuable?

A. 40. Yes, sir; it was very valuable.

Q. 41. On both of the quarter sections?

A. 41. Yes, sir; the whole section.
Q. 42. Did you have any conversation with Mr. Stubbs as to whether this was good agricultural land or not?

Mr. GEARIN: Objected to for the reason the same is incompetent and immaterial.
COURT: The objection is sustained.

ROBERT OSBORN, being called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination by RALEIGH STOTT:

83 Q. 43. Where do you live, Mr. Osborn?
A. 43. In Portland, Oregon.
Q. 44. How long have you lived in Portland, Oregon?
—. ——.
Q. 45. How old are you?
A. 45. Fifty-nine years.
Q. 46. Are you acquainted with the land in question?
A. 46. Yes, sir.
Q. 47. Have you examined it?
A. 47. I have.
Q. 48. When?
A. 48. Let me see. Last fall. I can tell you the date (referring to memoranda) September 4th.
Q. 49. Ninety-eight?
A. 49. Ninety-nine.
Q. 50. What experience have you had in examining timber lands?
A. 50. Pretty much all my life.
Q. 51. Where? In the West here or——
A. 51. In Michigan, Wisconsin, Minnesota, Washington and Oregon.
Q. 52. Well, now state what you saw. Give us your views.
A. 52. Concerning the timber land, you mean?
Q. 53. Did you examine the northeast quarter of section thirty-two town 9, N. R. 4, west?
A. 53. I did.
Q. 54. Describe the land with reference to the timber upon it?

Mr. GEARIN: I object for the same reasons previously given.
COURT: The court will permit the question to be asked. And it may be argued at the final submission.

A. 54. There was a heavy growth of timber. A very heavy growth. But I put it that the northeast quarter would cut one hundred and twenty-five or thirty-five thousand — to the acre, running thirty per cent. cleared but not including all the timber on the land.
Q. 55. You mean only the fir would run one hundred and thirty-five — to the acre, or all the timber?

84 A. 55. Yes, sir; not running less than thirty per cent., cleared. There is some hemlock which I do not include. I do not include that at all.

Q. 56. What is the chief value of that land, for timber or agriculture?

A. 56. The entire value is only timber, in my judgment.

Q. 57. In its present condition?

A. 57. Yes, sir.

Q. 58. Could not cultivate it in its present condition, at all?

A. 58. No sir.

Q. 59. How far is this land from the Columbia river?

A. 59. About two miles.

Q. 60. What opportunity is there for taking these logs to the river?

A. 60. Could take them by Mill creek. Could go that way, or could take them out by railroad.

Q. 61. Well, what do you say as to the southeast quarter?

A. 61. Same character as the northeast; same quality of timber but not quite so much timber.

Q. 62. How much would you say was on that tract?

A. 62. About one hundred thousand to the acre. It is the same character of timber, and there might be as much timber, but on account of the badly broken country, can't save as much on that as you could on the northeast.

Q. 63. Because the character of the surface soil is broken?

A. 63. Yes, sir.

Q. 64. How much, if any, of that could be cultivated in its present condition?

A. 64. I don't think any of it.

(No cross-examination.)

It is stipulated by the attorneys in this case in open court, that the court take judicial notice of any rules, regulations or decisions of the Land Department pertaining hereto.

The deposition of A. N. Spratt is considered read.

85 It was further stipulated by the respective attorneys herein in open court that the copies of the final receiver's receipts and the certificates of the register of the Vancouver land office issued to said Frank Smith and James Radcliffe, contained in Exhibits A & B, covering their respective entries, are true and correct copies of the original certificates issued to the said Smith and Radcliffe by said officers of the Land Department, and that said copies stand as and for the originals.

86 It was further agreed and stipulated in open court that plaintiff's objection to direct interrogatory eleven above set out, propounded to the witness C. M. Hogan, to wit, that the same was incompetent and immaterial and because the records introduced in evidence show that the Land Department passed upon that question as a question of fact and the decision of the Land Department was conclusive, was made to each of the questions,—direct interrogatories propounded to said witness C. M. Hogan, as above set out,

to wit, interrogatories 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 26, 27, 28, 29 and 30, and redirect interrogatories 37, 38, 40, 41, and also to each of the direct interrogatories above set out, propounded to the witness Robert Osborn, to wit, direct interrogatory 54, 55, 56, 57, 58, 59, 60, 61, 62. 63 and 64 and that to the court's ruling permitting said questions, including interrogatory eleven, to be asked, the plaintiffs by their attorneys then and there duly excepted, which exception was then and there allowed by the court.

87 The foregoing testimony on behalf of plaintiff and defendant, including the exhibits agreed to by the parties and certified by the court, was all the testimony taken or offered in said case and copies of the said exhibits and the said oral testimony are hereto attached by the court in pursuance of stipulation of parties hereto and are hereby certified as the statement of facts on appeal to the supreme court in the above-entitled suit.

Aug. 4, 1900.

A. L. MILLER, *Judge.*

87½ EXHIBITS "A" AND "B."

88 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, WASHINGTON, D. C., *May* 19, 1889.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the entry papers and proceedings of this office in the matter of canceled timber cash entry No. 2221 by James M. Radcliffe for S. E. ¼ sec. 32, T. 9, N. R. 4 W. Vancouver land district, State of Washington, is a true and literal exemplification of the originals as shown by the files and records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(S'd) BINGER HERMANN,
Commissioner of the General Land Office.

[Seal United States General Land Office.]

89 *Testimony of Witness under Act of June* 3, 1878.

WILLIAM J. DEETZ, being called as a witness in support of the application of James M. Radcliffe to purchase the S. E. ¼ of section 32, township 9, north of range 4 west, testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. Oak Point, Cowlitz Co. Wash. Ter.

Ques. 2. What is your occupation?

Ans. Farmer.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of it- smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. In June last by passing over the land on foot.

Ques. 5. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

Ans. It is not occupied and there are no improvements on it.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. Rough broken rocky hilly and cut up by deep cañons.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

Ans. Not to my knowledge.

90 Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because it is too rough hilly rocky and cut up by cañons for farming and there is good timber on it.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

(S'd) WILLIAM J. DEETZ.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 6th day of August, 1883.

[SEAL.] (S'd) S. W. BEALL,
Probate Judge, Cowlitz Co., Wash. Ter.

91 *Testimony of Witness under Act of June* 3, 1878.

FRANK SMITH, being called as a witness in support of the application of James M. Radcliffe to purchase the S. E. ¼ of section 32, township 9, north of range 4 west, testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. Oak Point, Cowlitz Co. Wash. Ter.

Ques. 2. What is your occupation?

Ans. Farmer.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of it- smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. In June last by passing over the land on foot.

Ques. 5. Is it occupied; or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

Ans. It is not occupied and there are no improvements on it.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. Rough broken rocky hilly and cut up by deep cañons.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

Ans. Not to my knowledge.

92 Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because it is too rough hilly rocky and cut up by cañons for farming and there is good timber on it.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

(S'd) FRANK SMITH.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 6th day of August, 1883.

[SEAL.] (S'd) S. W. BEALL,
Probate Judge, Cowlitz Co., Wash. Ter.

93 *Notice of Application to Purchase Timber Lands.*

LAND OFFICE AT VANCOUVER, W. T., *May 26th*, 1883.

Notice is hereby given that in compliance with the provisions of the act of Congress approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," James M. Radcliffe, of Cowlitz Co., Wash.

Ter. has this day filed in this office his application to purchase S. E. ¼ section 32, township 9, north, range 4 west.

Testimony in the above case will be taken before the judge of the probate court at Kalama, Wash. Ter., on Monday, August 6th, 1883.

Any and all persons having adverse claims to the above-described land, or any portion thereof are hereby required to file their claims in this office within sixty (60) days from date hereof.

(S'd) FRED W. SPARLING, *Register.*

94 STATE OF OREGON, } ss:
County of Columbia, }

I, Enoch G. Adams, being duly sworn, depose that I am the publisher of the Columbian, a weekly newspaper, published at St. Helen, Columbia county, Oregon, and that said newspaper has a general circulation in said county and State and also in the adjoining county of Cowlitz, Territory of Washington, and that said notice of application to purchase timber land, a printed copy of which is appended — and made a part of this affidavit has been published in said newspaper for the period of sixty days, beginning June 1st, A. D. 1883 and ending Aug. 3d, 1883, being ten successive issues of said newspaper, both days included.

Printer's fee, $10.00.

(S'd) ENOCH G. ADAMS.

Subscribed and sworn to before me this 28th day of August A. D. 1883.

(S'd) B. McB. CAPLES,
[SEAL.] *Notary Public for Ore.*

95 *Certificate as to Posting of Notice.*

LAND OFFICE AT VANCOUVER, W. T., *August 20th*, 1883.

I, Fred W. Sparling, register, do her-by certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of sixty days, I having first posted said notice on the 26th day of May, 1883.

(S'd) FRED W. SPARLING, *Register.*

96 *Sworn Statement under Act of June 3, 1878.*

LAND OFFICE AT VANCOUVER, W. T., *May 26th*, 1883.

I, James M. Radcliffe, of Cowlitz county, Washington Ter., desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," for the purchase of the S. E. ¼ of section 32 township 9 north of range 4 west do solemnly swear that I am over 21 years old and a native-born citizen of the United States that the said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements whatever

nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made an agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.

(S'd) JAMES M. RADCLIFFE.

Sworn to and subscribed before me this 26th day of May, 1883.

FRED W. SPARLING, *Register.*

97 No. 2221.

RECEIVER'S OFFICE AT VANCOUVER,
WASH. TER., *August 20th*, 1883.

Received from James M. Radcliffe of Cowlitz county, Wash. Ter., the sum of four hundred dollars and — cents: being in full for the S. E. ¼ quarter of section No. 32, in township No. 9, north, of range No. 4 west Willamette meridian, containing one hundred and sixty acres and — hundredths, at $2.50 per acre. Fees for allowing entry $10.00 paid.

$400.00. A. O. MARSH, *Receiver.*

[Written across the face:] Act of June 3, '78.
(Across the face in red ink: "Act June 3d, 1878.")

98 No. 2221.

LAND OFFICE AT VANCOUVER, W. T., *August 20th*, 1883.

It is hereby certified that, in pursuance of law, James M. Radcliffe, residing at Oak Point, in Cowlitz county, Wash. Ter. on this day purchased of the register of this office the southeast quarter of section No. 32 in township No. 9, north of range No. 4 west of the Willamette principal meridian Wash Ter. containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars and — cents, for which the said James M. Radcliffe has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said James M. Radcliffe shall be entitled to receive a patent for the lot above described.

(S'd) FRED W. SPARLING, *Register.*

(Across face in red ink: "Act June 3, 1878, canceled by little 'P' Jan'y 21, 1886. (S'd) H. H. J., B. B. S. chief div. 'P.'")

99 *Report of Fraudulent Claim or Entry.*

In cases of homestead and pre-emption claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases such other points will be covered as the nature of the case may require.

In every instance when names of parties or witnesses are given, the post-office address and residence must also be stated.

1. Name of claimant: James M. Radcliffe.

2. Description of land covered by filing or entry: S. E. ¼ section 32, township 9, north, range 4 west, in Cowlitz Co. Washington Ter.

3. Date of examination: September 26–27, 1884.

4. Character of land (timber, mineral, agricultural, or desert). If timber land, whether, if cleared, it would be unfit for agriculture; if for timber-culture entry, whether section is naturally devoid of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof: Timber land soil clay loam surface gently rolling rough in few places covered with heavy growth of fir cedar and hemlock trees good agricultural land could be profitably cultivated after land is cleared of the timber.

5. Date and number of filing or entry; if proof has been made, date of proof and number of final certificate: August 20th, 1883. No. filing 2221, date of proof August 6, 1883 No. final certificate 2221.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim: Yes, name of the present owner A. F. Spratt, warrantee deed from James M. Radcliffe the claimant.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed. "No."

100 8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold. "No improvements No timber has been cut."

Diagram of Locality of Claim.

9. Indicate on the diagram the tracts covered by the entry or filing, and all roads leading from the same, stating to and from what points they lead, and distances; also note by appropriate marks the location of buildings upon the land, and state in your explanation below the means adopted to identify the land as that covered by the claim under investigation:

Township No.	9	Range No.	4	West	Wil. Mer.	
6	5	4		3	2	1
7	8	9		10	11	12
18	17	16		15	14	13
19	20	21		22	23	24
30	29	28		27	26	25
31	32 :2221	33		34	35	36

Explanation.

On Sept. 26th and 27th 1884 in company with C. N. Hogan and B. A. Deetz I traced part of the line with compass and examined this land passing across it in various directions.

10. Character, extent and value of improvements in detail and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, &c. "No improvements."

101 11. Residence of claimant: When actually established on the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim: "Resi-en*t* of claimant unknown at present, it is believed that he was qualified to make a legal entry of this land."

12. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant: Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record whether the entry has been abandoned or relinquished, and if so, when and for whose benefit: "Sale has been made to A. N. Spratt, a non-resident by warrantee deed dated March 13, 1884, recorded March 20, 1884, consideration or price paid $800, to James M. Radcliffe by A. N. Spratt."

13. Names, locality of residence, and post-office address of witnesses; their reliability; abstract of their testimony: "C. N. Hogan, Castle Rock and B. E. Deetz Oak Point Wash. Ter. are reliable and will testify that this is good agricultural land and that they believe Radcliffe took this land for speculation and not in good faith."

14. Was the fraud willful? "Yes."

15. Have any legal proceedings been instituted? "No."

16. Action recommended by agent: "That hearing be ordered by

the Hon. Commissioner on the grounds *of* this entry is fraudulent and for speculative purposes and the land suitable for farming."

Dated at Vancouver W. T. Oct. 4, 1884.

(S'd) S. P. C. STUBBS,
Special Agent, General Land Office.

102 TERRITORY OF WASHINGTON, } ss:
County of Cowlitz, }

C. N. Hogan, being first duly sworn says he is a resident of Cowlitz county, and is the present county surveyor of said county, that on Sept. 26 and 27 in company with Special Agent Stubbs and C. N. Hogan he assisted in tracing part of the lines and examining the land embraced in timber entry No. 2221 of James M. Radcliffe for the S. E. ¼ sec. 32, twp. 9, N. R. 4. W. W. M. soil dark clay loam gently rolling creek running across this land covered with fir cedar and hemlock trees this would be valuable land for agricultural purposes after timber is removed.

(S'd) C. N. HOGAN.

Sworn and subscribed to before me this 27th day of September, 1884.

(S'd) S. P. C. STUBBS,
Special Agent, G. L. O.

103 TERRITORY OF WASHINGTON, } ss:
County of Cowlitz, }

Benjamin A. Deetz, being first duly sworn says he is a resident of Cowlitz county and on the 26th and 27th of September, 1884, in company with Special Agent Stubbs and B. A. Deetz he assisted in tracing lines and examining the following-described land embraced in timber entry No. 2221 of James M. Radcliffe for the S. E. ¼ sec. 32, twp. 9, north, range 4 west W. M. soil dark clay loam gently rolling somewhat broken in few places covered with heavy growth of fir cedar and hemlock trees. I consider this good agricultural land and it can be profitably cultivated after timber is removed.

(S'd) BENJAMIN A. DEETZ.

Sworn and subscribed to before me this 27th day of September, 1884.

(S'd) S. P. C. STUBBS,
Special Agent, G. L. O.

104 *Registry Receipt.*

POST-OFFICE AT VANCOUVER, W. T.

Registered letter of F. W. Sparling. No. 73, rec'd Oct. 27, 1885. Vancouver, W. T. addressed to James M. Radcliffe. Oak Point, Cowlitz Co. W. T.

HATTIE DENNISON, *P. M.*

105 UNITED STATES LAND OFFICE,
VANCOUVER, WASH. TER., *January 5th*, 1886.

Hon. Commissioner General Land Office.

SIR: Referring to your letter "P" of October 17th, 1885, I have the honor to report that after due notice to party in interest, sixty days have elapsed without appeal from your decision being filed in this office in case of timber cash entry No. 2221, James M. Radcliffe for S. E. ¼ sec. 32, twp. 9, north, range 4 west, W. M.

The notice to claimant was sent by registered letter to his last known post-office address at Oak Point, Cowlitz Co., Washington Ter. as per P. O. receipt herewith, and was returned "uncalled for." It is believed that said Radcliffe is not a resident of this Territory.

Very respectfully, FRED W. SPARLING, *Register.*

106 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct. 21st*, 1884.

Register and receiver, Vancouver, W. T.

GENTLEMEN: James M. Radcliffe made timber cash entry No. 2221 August 20th, 1883, of the S. E. ¼ sec. 32 township 9, north range 4 west alleging that said land is unfit for cultivation and valuable chiefly for its timber; and that he made the entry for his own use and benefit, and not for the purpose of speculation.

On Oct. 4th 1884 Special Agent S. P. C. Stubbs reported that he had made a personal examination of said tract and found the surface gently rolling, rough in few places, covered with heavy growth of fir, cedar and hemlock; that it is good agricultural land, and could be profitably cultivated after the timber is cleared off. It also appears that Radcliffe transferred the land by warranty deed dated March 13, 1884, to A. N. Spratt.

The special agent's report is accompanied by affidavits of witnesses.

Action on said entry is suspended subject to a final determination upon a hearing which you will hold at a time to be fixed after consultation with the special agent, to enable him to appear and present testimony on the part of the Government, and at which the entryman will be allowed full opportunity to defend the validity of his claim subject, however, to the requirements of office circular of August 6, 1884.

Issue due notice of the hearing, informing the entryman of the nature and substance of the special agent's report, as above set forth, and advising him that in default of an appearance at said hearing his entry will be finally canceled. If you have knowledge that the land has been transferred you will also notify the transferee.

Respectfully, L. HARRISON,
Acting Commissioner.

107 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct. 17th*, 1885.

Register & receiver, Vancouver, Wash. Ter.

GENTLEMEN: Referring to your letter of Sept. 2nd last, reporting a list of hearings suspended under my letter "P" of Aug. 26th last, and to office letter "P" of Oct. 21st, 1884, ordering a hearing on the report of late Special Agent S. P. C. Stubbs in case of timber-land entry # 2221, by James M. Radcliffe for S. E. ¼ sec. 32, twp. 9, north range 4 west, said order for a hearing is hereby rescinded and the entry in question is held for cancellation on the showing made in the special agent's report.

You will give claimant due notice of this action informing him of the nature and substance of the special agent's report, and advising him that he will be allowed sixty days in which to appeal to the Secretary of the Interior, or to show cause why his entry should be sustained, in accordance with circular instructions of July 31st, 1885, and that if no appeal is taken or he fails to show cause why his entry should be sustained the same will be finally canceled.

Respectfully, S. M. STOCKSLAGER,
Ass't Commissioner.

108 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Jan'y 21st*, 1886.

Register & receiver, Vancouver, W. T.

GENTLEMEN: Referring to your letters of the 5th inst. reporting that the following-named entrymen were duly advised of the action of this office holding their entries for cancellation, and that they have failed to take any action in the premises, you are advised that the entries are this day canceled.

You will so note on your records and hold the land subject to entry by the first legal applicants.

Timber cash # 2220, Frank Smith, N. E. ¼ sec. 32, T. 9 N. R. 4 W.

Timber cash # 2221, James M. Radcliffe, S. E. ¼ sec. 32, T. 9 N. R. 4 W.

Pre-emption cash, # 2300, Frank Smith, N. W. ¼ sec. 32, T. 9 N. R. 4 W.

Pre-emption cash # 2303, James M. Radcliffe, S. W. ¼ sec. 32, T. 9 N. R. 4 W.

Respectfully, WM. A. J. SPARKS,
Commissioner.

109 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 19, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the entry papers and proceedings of this office in the matter of canceled timber cash entry No. 2220 by Frank Smith for N. E. ¼ sec. 32, T. 9, N. R. 4 W. Van-

couver land district, State of Washington, is a true and literal exemplification of the originals as shown by the files and records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(S'd) BINGER HERMANN,
Commissioner of the General Land Office.

[Seal United States General Land Office.]

110 *Testimony of Witness under Act of June* 3, 1878.

JAMES M. RADCLIFFE, being called as a witness in support of the application of Frank Smith to purchase the N. E. ¼ of section 32, township 9, north of range 4 W. W. M., testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. Oak Point, Cowlitz Co. Wash. Ter.

Ques. 2. What is your occupation?

Ans. Farmer.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of it- smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. In June last by passing over the land on foot.

Ques. 5. Is it occupied; or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

Ans. It is not occupied and there are no improvements on it.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. Rough broken rocky hilly and cut up by deep cañons.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

Ans. Not to my knowledge.

111 Ques. 9. Is the land more valuable for mineral or any other purposes than for timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because it is too rough hilly rocky and cut up by cañons for farming and there is good timber on it.

Ques. 11. Do you — whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

(S'd) JAMES M. RADCLIFFE.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 6th day of August, 1883.

(S'd) S. W. BEALL,

[SEAL.] *Probate Judge, Cowlitz Co., Wash. Ter.*

112 *Testimony of Witness under Act of June 3, 1878.*

WILLIAM J. DEETZ, being called as a witness in support of the application of Frank Smith to purchase the N. E. ¼ of section 32, township 9, north of range 4 west, W. M. testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. Oak Point, Cowlitz Co. Wash. Ter.

Ques. 2. What is your occupation?

Ans. Farmer.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of it- smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. In June last by passing over the land on foot.

Ques. 5. Is it occupied; or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

Ans. It is not occupied and there are no improvements on it.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. Rough broken rocky hilly and cut up by deep cañons.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

Ans. Not to my knowledge.

113 Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because it is too rough hilly rocky and cut up by cañons for farming and there is good timber on it.

Ques. 11. Do you — whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with

any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

(S'd) WILLIAM J. DEETZ.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 6th day of August, 1883.

(S'd) S. W. BEALL,
[SEAL.] *Probate Judge, Cowlitz Co., Wash. Ter.*

114 *Notice of Application to Purchase Timber Lands.*

LAND OFFICE AT VANCOUVER, W. T., *May 26th*, 1883.

Notice is hereby given that in compliance with the provisions of the act of Congress approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," Frank Smith, of Cowlitz Co., Wash. Ter. has this day filed in this office his application to purchase N. E. ¼ sec. 32, township 9, north, range 4 west W. M.

Testimony in the above case will be taken before the judge of the probate court at Kalama, Wash. Ter., on Monday, August 6th, 1883.

Any and all persons having adverse claims to the above-described land, or any portion thereof are hereby required to file their claims in this office within sixty (60) days from date hereof.

(S'd) FRED W. SPARLING, *Register.*

115 STATE OF OREGON, } ss:
County of Columbia, }

I, Enoch J. Adams, being duly sworn, depose that I am the publisher of the Columbian, a weekly newspaper, published at St. Helen, Columbia county, Oregon, and that said newspaper has a general circulation in said county and State and also in the adjoining county of Cowlitz, Territory of Washington, and that said notice of application to purchase timber land, a printed copy of which is appended and made a part of this affidavit has been published in said newspaper for the period of sixty days, beginning June 1st, A. D. 1883 and ending Aug. 3d, 1883, being ten successive issues of said newspaper, both days included.

Printer's fee, $10.00.

(S'd) ENOCH J. ADAMS.

Subscribed and sworn to before me this 28th day of August A. D. 1883.

(S'd) B. McB. CAPLES,
[SEAL.] *Notary Public for Ore.*

116 *Certificate as to Posting of Notice.*

LAND OFFICE AT VANCOUVER, W. T., *August 20th*, 1883.

I, Fred W. Sparling, register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of sixty days, I having first posted said notice on the 26th day of May, 1883.

(S'd) FRED W. SPARLING, *Register.*

117 *Sworn Statement under Act of June 3, 1878.*

LAND OFFICE AT VANCOUVER, W. T., *May 26th*, 1883.

I, Frank Smith, of Cowlitz county, Washington Ter., desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," for the purchase of the N. E. ¼ of section 32, township 9, north, of range 4 west W. M. do solemnly swear that I am over 21 years old and a native-born citizen of the United States that the said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements whatever nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.

(S'd) FRANK SMITH.

Sworn to and subscribed before me this 26th day of May, 1883.

FRED W. SPARLING, *Register.*

118 No. 2221.

RECEIVER'S OFFICE AT VANCOUVER,
WASH. TER., *August 20th*, 1883.

Received from Frank Smith of Cowlitz county, Wash. Ter., the sum of four hundred dollars and — cents; being in full for the N. E. ¼ quarter of section No. 32, in township No. 9, north, of range No. 4 west W. M., containing one hundred and sixty acres and — hundredths, at $2.50 per acre. Fees for allowing entry $10.00 paid.

$400.00 A. O. MARSH, *Receiver.*

(Across the face in red ink: "Act June 3d, 1878.")

119 No. 2221.

LAND OFFICE AT VANCOUVER,
W. T., *August 20th*, 1883.

It is hereby certified that, in pursuance of law, Frank Smith, residing at Oak Point, in Cowlitz county, Wash. Ter. on this day purchased of the register of this office the N. E. ¼ of section No. 32 in township No. 9, north, of range No. 4 west of the Willamette principal meridian Wash. Ter. containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars and — cents, for which the said Frank Smith has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Frank Smith shall be entitled to receive a patent for the lot above described.

(S'd) FRED W. SPARLING, *Register*.

(Across face in red ink: "Act June 3, 1878, canceled by little 'P' Jan'y 21, 1886. (S'd) H. H. J., B. B. S., chief div. 'P.'")

120 *Report of Fraudulent Claim or Entry.*

In cases of homestead and pre-emption claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases such other points will be covered as the nature of the case may require.

In every instance when names of parties or witnesses are given, the post-office address and residence must also be stated.

1. Name of claimant: Frank Smith

2. Description of land covered by filing or entry: N. E. ¼ sec. 32, township 9, north, range 4 west, in Cowlitz Co. Washington, Ter.

3. Date of examination. Sept. 26–27, 1884.

4. Character of land (timber, mineral, agricultural, or desert). If timber land, whether, if cleared, it would be unfit for agriculture; if for timber-culture entry, whether section is naturally devoid of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof: Timber land soil clay loam surface gently rolling rough in few places covered with heavy growth of fir cedar and hemlock trees good agricultural land could be profitably cultivated after land is cleared of the timber.

5. Date and number of filing or entry; if proof has been made, date of proof and number of final certificate: August 20th, 1883. No. filing 2220 date of proof August 6, 1883 No. final certificate 2220.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim: Yes, name of present owner A. N. Spratt, warrantee deed from Frank Smith the claimant.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed. "No."

121 8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold. "No improvements. No timber has been cut."

Diagram of Locality of Claim.

9. Indicate on the diagram the tracts covered by the entry or filing, and all roads leading from the same, stating to and from what points they lead, and distances; also note by appropriate marks the location of buildings upon the land, and state in your explanation below the means adopted to identify the land as that covered by the claim under investigation.

Township No. 9	Range No. 4	West Wil. Mer.	
6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
	2220				
31	32	33	34	35	36

Explanation.

On Sept. 26th and 27th 1884 in company with C. N. Hogan and B. A. Deetz I traced part of the line with compass and examined this land passing across it in various directions.

10. Character, extent and value of improvements in detail and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, &c. "No improvements."

122 11. Residence of claimant: When actually established on the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim: "Resi-ent- of claimant unknown at present, it is believed that he was qualified to make a legal entry of this land."

12. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant: Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferre-, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record whether the entry has been

abandoned or relinquished, and if so, when and for whose benefit: "Sale has been made to A. N. Spratt, a non-resident by warrantee deed dated March 13, 1884, recorded March 20, 1884, consideration or price paid $800 to Frank Smith by A. N. Spratt the claimant Smith has left the country. Spratt is a non-resident."

13. Names, locality of residence, and post-office address of witnesses; their reliability; abstract of their testimony: "C. N. Hogan, Castle Rock and B. E. Deetz Oak Point Wash. Ter. are reliable and will testify that this is good agricultural land and that they believe Frank Smith took this land for speculation and not in good faith."

14. Was the fraud willful? "Yes."

15. Have any legal proceedings been instituted? "No."

16. Action recommended by agent: "R That hearing be ordered by the Hon. Commissioner on the grounds *of* this entry is fraudulent and for speculative purposes and the land suitable for farming.

Dated at Vancouver W. T. Oct. 4, 1884.

(S'd) S. P. C. STUBBS,
Special Agent, General Land Office.

123 TERRITORY OF WASHINGTON, } ss:
County of Cowlitz, }

Benjamin A. Deetz, being first duly sworn says he is a resident of Cowlitz county, and is the present county surveyor of said county, that on Sept. 26 and 27 in company with Special Agent Stubbs and C. N. Hogan he assisted in tracing part of the lines and examining the land embraced in timber entry No. 2220 of Frank Smith for the N. E. ¼ sec. 32, twp. 9, N. R. 4 W. soil dark clay loam gently rolling creek running across this land covered with fir cedar and hemlock trees this would be valuable land for agricultural purposes after timber is removed.

(S'd) BENJAMIN A. DEETZ.

Sworn and subscribed to before me this 27th day of September, 1884.

(S'd) S. P. C. STUBBS,
Special Agent, G. L. O.

124 TERRITORY OF WASHINGTON, } ss:
County of Cowlitz, }

C. N. Hogan, being first duly sworn says he is a resident of Cowlitz county and on the 26th and 27th of September, 1884, in company with Special Agent Stubbs and B. A. Deetz he assisted in tracing lines and examining the following-described land embraced in timber entry No. 2220 of Frank Smith for the N. E. ¼ sec. 32, twp. 9 north, range 4 west, soil dark clay loam gently rolling somewhat broken in few places covered with heavy growth of fir cedar and hemlock trees. I consider this good agricultural land and it can be profitably cultivated after timber is removed.

(S'd) C. N. HOGAN.

Sworn and subscribed to before me this 27th day of September, 1884.

(S'd) S. P. C. STUBBS,
Special Agent, G. L. O.

125 *Registry Receipt.*

POST-OFFICE AT VANCOUVER, W. T.

Registered letter of F. W. Sparling, No. 72, rec'd Oct. 27, 1885, Vancouver, W. T., addressed to Frank Smith, Oak Point, Cowlitz Co., W. T.

HATTIE DENNISON, *P. M.*

126 UNITED STATES LAND OFFICE,
VANCOUVER, WASH. TER., *January 5th*, 1886.

Hon. Commissioner General Land Office.

SIR: Referring to your letter "P" of October 17th, 1885, I have the honor to report that after due notice to party in interest, sixty days have elapsed without appeal from your decision being filed in this office in case of timber cash entry No. 2220, Frank Smith, for N. E. ¼ sec. 32, twp. 9, north, range, 4 west W. M.

The notice to claimant was sent by registered letter to his last known post-office address at Oak Point, Cowlitz Co. Washington Ter. as per P. O. receipt herewith, and was returned "uncalled for." It is believed that said Frank Smith is not a resident of this Territory.

Very respectfully, FRED W. SPARLING, *Register.*

127 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct. 21st*, 1884.

Register and receiver, Vancouver, W. T.

GENTLEMEN: Frank Smith made timber cash entry No. 2220 August 20th, 1883, of the N. E. ¼ sec. 32, twp. 9, north, range 4 west, under act of June 3, 1878 alleging that said land is unfit for cultivation and valuable chiefly for its timber; and that he made the entry for his own use and benefit, and not for the purpose of speculation.

On Oct. 4th 1884 Special Agent S. P. C. Stubbs reported that he had made a personal examination of said tract and found the surface gently rolling, rough in few places, covered with heavy growth of fir, cedar and hemlock; that it is good agricultural land, and could be profitably cultivated after the timber is cleared off. It also appears that Radcliffe transferred the land by warranty deed dated March 13, 1884, to A. N. Spratt.

The special agent's report is accompanied by affidavits of witnesses.

Action on said entry is suspended subject to a final determination upon a hearing which you will hold at a time to be fixed after consultation with the special agent, to enable him to appear and present

testimony on the part of the Government, and at which the entryman will be allowed full opportunity to defend the validity of his claim, subject, however, to the requirements of office circular of August 6, 1884.

Issue due notice of the hearing, informing the entryman of the nature and substance of the special agent's report, as above set forth, and advising him that in default of an appearance at said hearing his entry will be finally canceled. If you have knowledge that the land has been transferred you will also notify the transferree.

Respectfully, L. HARRISON,
Acting Commissioner.

128 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct. 17th*, 1885.

Register & receiver, Vancouver, Wash. Ter.

GENTLEMEN: Referring to your letter of Sept. 2nd last, reporting a list of hearings suspended under my letter "P" of Aug. 26th last, and to office letter "P" of Oct. 21st, 1884, ordering a hearing on the report of late Special Agent S. P. C. Stubbs in case of timber-land entry # 2220 by Frank Smith, for N. E. ¼ sec. 32, twp. 9, north R. 4 W. said order for a hearing is hereby rescinded and the entry in question is held for cancellation on the showing made in the special agent's report.

You will give claimant due notice of this action informing him of the nature and substance of the special agent's report, and advising him that he will be allowed sixty days in which to appeal to the Secretary of the Interior, or to show cause why his entry should be sustained, in accordance with circular instructions of July 31st, 1885, and that if no appeal is taken or he fails to show cause why his entry should be sustained the same will be finally canceled.

Respectfully, S. M. STOCKSLAGER,
Ass't Commissioner.

129 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Jan'y 21st*, 1886.

Register & receiver. Vancouver, W. T.

GENTLEMEN: Referring to your letters of the 5th inst. reporting that the following-named entrymen were duly advised of the action of this office holding their entries for cancellation, and that they have failed to take any action in the premises, you are advised that the entries are this day canceled.

You will so note on your records and hold the land subject to entry by the first legal applicants.

Timber cash # 2220, Frank Smith, N. E. ¼ sec. 32 T. 9 N. R. 4 W.

Timber cash # 2221, James M. Radcliffe, S. E. ¼ sec. 32, T. 9 N. R. 4 W.

Pre-emption cash, # 2300, Frank Smith, N. W. ¼ sec. 32, T. 9 N. R. 4 W.

Pre-emption cash # 2303, James M. Radcliffe, S. W. ¼ sec. 32 T. 9 N. R. 4 W.

Respectfully, WM. A. J. SPARKS,
Commissioner.

130 EXHIBIT "E."

UNITED STATES LAND OFFICE,
VANCOUVER, WASH. TER., *January* 5, 1886.

Hon. Commissioner of the General Land Office.

SIR: Referring to your letter "P" of October 17, 1885, I have the honor to report that after due notice to party in interest, sixty days have elapsed without appeal from your decision being filed in this office in case of timber cash entry No. 2220, Frank Smith for N. E. ¼ of sec. 32, T. 9 N. R. 4 W. Will. mer.

The notice to claimant was sent by registered letter to his address at Oak Point, Cowlitz Co., Wash. Ter. as per P. O. receipt herewith and was returned "uncalled for." It is believed that said Frank Smith is not a resident of this Territory.

Very respectfully,
(S'd) FRED W. SPARLING, *Register.*

U. S. LAND OFFICE, VANCOUVER, WASH., *Aug.* 11, 1899.

I hereby certify that the above and foregoing is a full, true and correct copy of the letter-press copy of the letter it purports to be as is on file and of record in this office in the official letter-press copy book.

(S'd) L. B. CLOUGH,
Receiver of Above-named Land Office.

131 EXHIBIT "F."

UNITED STATES LAND OFFICE,
VANCOUVER, WASH. TER., *January* 5, 1886.

Hon. Commissioner of the General Land Office.

SIR: Referring to your letter "P" of October 17th, 1885, I have the honor to report that after due notice to party in interest, sixty days have elapsed without appeal from your decision being filed in this office in case of timber cash entry No. 2221, James M. Radcliffe, for S. E. ¼ of sec. 32, T. 9 N. R. 4 W. Will. mer.

The notice to claimant was sent by registered letter to his address at Oak Point, Cowlitz Co. Wash. Ter. as per P. O. receipt herewith and was returned "uncalled for." It is believed that said James M. Radcliffe is not a resident of this Territory.

Very respectfully,
(S'd) FRED W. SPARLING, *Register.*

U. S. LAND OFFICE,
VANCOUVER, WASH., *Aug.* 11, 1899.

I hereby certify that the above and foregoing is a full, true and correct copy of the letter-press copy of the letter it purports to be as

is on file and of record in this office in the official letter-press copy book.

(S'd) L. B. CLOUGH,
Receiver of Above-named Land Office.

132 EXHIBIT "H."

UNITED STATES LAND OFFICE,
VANCOUVER, WASH. TER., *October 26th*, 1885.

Mr. Frank Smith, Oak Point, Wash. Ter.

SIR: I am directed by the Hon. Commissioner of the General Land Office to notify you that your timber land entry No. 2220, for the N. E. ¼ of sec. 32, t'p 9 N. R. 4 W. W. M. is held for cancellation upon the report of late Special Agent S. P. C. Stubbs, in which report it is alleged that the tract in question is covered with fir, cedar and hemlock trees; that it is good agricultural land, gently rolling, somewhat rough in places, and can be successfully cultivated after the timber is removed.

You will be allowed sixty days within which time to file an appeal from the action hereof to the Hon. Secretary of the Interior, or to show cause why your said entry should be sustained, and if you fail to file an appeal or to show cause why your entry should be sustained within said time, your entry will be finally cancelled.

Should you desire a hearing to determine the character of the land, you must execute a sworn statement setting forth specifically the grounds of your defense, and what you expect to prove at such hearing, and also that your application is made in good faith and not for the purpose of delay.

Very respectfully,

(S'd) FRED W. SPARLING, *Register.*

"H."

U. S. LAND OFFICE,
VANCOUVER, WASHINGTON, *August* 11, 1899.

I hereby certify that the above and foregoing is a full, true and correct copy of the letter-press copy of the letter it purports to be as found on file and of record in this office, in the official letter-press copy book.

(S'd) L. B. CLOUGH,
Receiver of Above-named Land Office.

133 EXHIBIT "I."

UNITED STATES LAND OFFICE,
VANCOUVER, WASH. TER., *October 27th*, 1885.

Mr. James M. Radcliffe, Oak Point, Wash. Ter.

SIR: I am directed by the Hon. Commissioner of the General Land Office to notify you that your timber-land entry No. 2221, for the S. E. ¼ of sec. 32, t'p 9 N. R. 4 W. W. M. is held for cancellation upon the report of late Special Agent S. P. C. Stubbs, in which re-

port it is alleged that the tract in question has a surface gently rolling, rough in few places, covered with heavy growth of fir, cedar and hemlock; that it is good agricultural land, and could be profitably cultivated after the timber is cleared off. It also appears that you transferred the land by warranty deed to A. N. Spratt on March 13, 1884.

You will be allowed sixty days within which time to file an appeal from the action hereof to the Hon. Secretary of the Interior, or to show cause why your said entry should be sustained, and if you fail to file an appeal or to show cause why your entry should be sustained within said time, your entry will be finally cancelled.

Should you desire a hearing to determine the character of the land, you must execute a sworn statement setting forth specifically the grounds of your defense, and what you expect to prove at such hearing, and also that your application is made in good faith and not for the purpose of delay.

Very respectfully,

(S'd) FRED. W. SPARLING, *Register.*
"H."

U. S. LAND OFFICE,
VANCOUVER, WASHINGTON. *August* 11, 1899.

I hereby certify that the above and foregoing is a full, true and correct copy of the letter-press copy of the letter it purports to be as found on file and of record in this office in the official letter-press copy book.

(S'd) L. B. CLOUGH,
Receiver of Above-named Land Office.

134 EXHIBIT "2."

Know all men by these presents: That I, Frank Smith of Oak Point, Washington Territory in consideration of eight hundred dollars to me paid by A. N. Spratt of Alpina, Michigan, do hereby grant, bargain, sell and convey to said A. N. Spratt, his heirs and assigns forever, the following-described parcel of real estate, to wit: The northeast quarter of section thirty-two, township nine, north of range four west (N. E. ¼ sec. 32, T. 9 N. R. 4 W.) of the Willamette meridian, containing one hundred and sixty acres of land, situate in Cowlitz county, Washington Territory.

Together with the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and also all my estate, right, title and interest, at law and equity therein or thereto including dower and right of dower.

To have and to hold the same to the said A. N. Spratt his heirs and assigns forever. And I the said Frank Smith do covenant with the said A. N. Spratt and his legal representatives forever, that the said real estate is free from all incumbrances, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said A. N. Spratt, his heirs and assigns forever, against the lawful claims and demands of all persons whosoever.

In witness whereof I have hereunto set my hand and seal this thirteenth day of February, A. D. 1884.

(S'd) FRANK SMITH. [SEAL.]

Executed and signed in presence of:
GEO. H. DURHAM.
W. M. GREGORY.

STATE OF OREGON, } ss:
County of Multnomah, }

This certifies, that on this 13th day of February, 1884, before me, the undersigned, a notary public in and for the said county and State, personally appeared the within-named Frank Smith
135 who is known to me to be the identical person described in and who executed the within instrument and acknowledged to me that he executed the same freely and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

(S'd) W. M. GREGORY,
[SEAL.] *Notary Public of the State of Oregon.*

Endorsed on the back of the foregoing deed as follows:
"Warranty deed" Def't's Ex. 3 Frank Smith to A. N. Spratt.

TER. OF WASH., } ss:
Cowlitz County, }

I hereby certify that the within instrument of writing was received for record on the 20 day of March at 9.55 o'clock a. m. 1884, and recorded on page 97 in Book I records of deeds of said county.

Witness my hand and seal of county affixed.

C. E. FORSYTH,
County Clerk.

136 EXHIBIT "3."

Know all men by these presents: That I James M. Radcliffe of Oak Point, Washington Territory, in consideration of eight hundred dollars, to me paid by A. N. Spratt of Alpina, Michigan, do hereby grant, bargain, sell and convey to said A. N. Spratt his heirs and assigns forever, the following-described parcel of real estate, to wit: The whole of the southeast quarter (S. E. ¼) of section No. thirty-two (32) in township No. nine (9), north of range No. four (4) west, Willamette meridian, containing one hundred and sixty (160) acres, situate, lying and being in Cowlitz county, Territory of Washington.

Together with the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and also all * * * estate, right, title and interest, at law and equity therein or thereto.

To have and to hold the same to the said A. N. Spratt his heirs and assigns forever. And I the said James M. Radcliffe do covenant with the said A. N. Spratt and his legal representatives forever,

that the said real estate is free from all incumbrances, and that I will and my heirs, executors and administrators, shall warrant and defend the same to the said A. N. Spratt, his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof I have hereunto set my hand and seal this thirteenth day of February, A. D. 1884.

(S'd) JAMES M. RADCLIFFE. [SEAL.]

Executed and signed in presence of:
NATHAN D. SIMON.
W. T. HUME.

STATE OF OREGON, }
County of Multnomah, } ss:

This certifies that on this 13" day of February, 1884, before me, the undersigned, a commissioner of deeds for Washington Territory residing at Portland, Oregon, personally appeared the within-named James M. Radcliffe who is known to me to be the identical person described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily
137 and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

(S'd) W. T. HUME,
Commissioner of Deeds for Washington Territory,
[SEAL.] *Residing at Portland, Oregon.*

"Endorsed on the back of the foregoing deed as follows:"
"Warranty deed" James M. Radcliffe to A. N. Spratt.

TER. OF WASH., }
Cowlitz County. }

I certify that the within instrument of writing was received for record on the 20" day of March at 10 o'clock a. m. 1884, and recorded on page 98 in Book I records of deeds of said county.

Witness my hand and seal of county affixed.

C. E. FORSYTH,
County Clerk.

138 EXHIBIT "M."

In the Superior Court of the State of Washington for the County of Cowlitz.

WHITNEY, STINCHFIELD & REMICK, Plaintiffs, }
vs. } Stipulation.
A. N. SPRATT, Defendant. }

It is hereby stipulated by and between the respective parties to the above-entitled suit:

1. That the certified copies from the Commissioner of the General

Land Office herewith filed in this case, marked Exhibits "A," "B," "C" and "D," together with letters, Exhibits "E," "F," "G," "H," "I," "J," "K," and "L" are correct, full, true and complete transcripts of all proceedings of the land office at Vancouver, Washington, and of the General Land Office, Department of the Interior, Washington, D. C., touching the pre-emption entry of Frank Smith for the northwest quarter of section thirty-two, township nine, north, range four, west of the Willamette meridian, and of the timber-land entry of Frank Smith for the northeast quarter of section thirty-two, township nine, north, range four, west of the Willamette meridian, and of the pre-emption entry of James M. Radcliffe for the southwest quarter of section thirty-two, township nine, north, range four west W. M.; and of the timber-land entry of James M. Radcliffe for the southeast quarter of section thirty-two, township nine, north, range four, west W. M.; and that said exhibits are in evidence in this case and may be considered by the court.

It is further stipulated:

1. That on the 25th day of June, 1890, the Government of the United States issued to Oliver P. Church its patent for the southwest quarter of section thirty-two, township nine, north, range four, west, which patent was received by said Oliver P. Church and recorded August 21, 1890, in the records of deeds, Cowlitz county, Washington.

139 2. That on the 25th day of June, 1890, the Government of the United States issued to Ellis Walker its patent for the southeast quarter of section thirty-two, township nine, north, range four, west, which patent was received by said Ellis Walker and recorded on August 25, 1890, in the records of deeds of Cowlitz county, Washington.

3. That on the 25th day of June, 1890, the Government of the United States issued to Benjamin L. Hennes its patent for the northeast quarter of section thirty-two township nine north, range four, west, which patent was received by said Benjamin L. Hennes and recorded on the 25th day of August, 1890, in the records of deeds of Cowlitz county, Washington.

4. That on the 21st day of September, 1889, the Government of the United States issued to Walter R. Glenmorgan its patent on the northwest quarter of section thirty-two, township nine, north, range four, west, which patent was received by said Walter R. Glenmorgan and recorded on the 21st day of August, 1890, in the records of deeds of Cowlitz county, Washington.

5. That the plaintiffs herein deraign title by an unbroken chain of conveyance from said Oliver P. Church, Ellis Walker, Benjamin L. Hennes and Walter R. Glenmorgan for said several quarter sections so patented to said several patentees, and comprising the whole of said section thirty-two.

6. That plaintiffs were in possession of all said property at the time of the beginning of this suit and have paid the taxes thereon since the 12th day of August, 1890.

7. It is stipulated that said section thirty-two was surveyed unof

fered public lands of the United States, prior to and during the year 1883.

8. That deed from James M. Radcliffe to A. N. Spratt of February 30, 1884, recorded in Cowlitz county, Territory of Washington, February 27, 1884, the deed from James M. Radcliffe to A. N. Spratt, dated February 13, 1884, and recorded in said Cowlitz county on the 20th day of March, 1884, the deed of Frank Smith to A. N.
140 Spratt, dated February 13, 1884, and recorded March 20, 1884, and the deed of Frank Smith to A. N. Spratt, dated February 13, 1884, and recorded the 27th day of February, 1884, be read and considered in evidence in this case.

(S'd) DOLPH, MALLORY, SIMON & GEARIN,
For Plaintiffs.
" STOTT AND STOUT, *For Defendant.*

141 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and JAMES A. Remick, Trustee, Plaintiffs,
vs.
A. N. SPRATT, Defendant.

It is hereby stipulated by and between the parties to the above-entitled suit, by their attorneys, Stott, Boise and Stout, and T. H. Ward, and Dolph, Mallory, Simon & Gearin, that the deposition of A. N. Spratt, defendant herein, be taken before me C. K. Marshall, notary public for the State of California, residing at Oakland, California, on the interrogatories and cross-interrogatories attached hereto.

It is further stipulated that upon the taking of said deposition that the same be mailed to the clerk of the superior court at Vancouver Washington, and it is to be read and received as evidence at the trial of this cause, subject only to objection as to materiality and relevancy; and all other objections, including the form of the taking of said deposition, are hereby expressly waived.

(S'd) DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Plaintiff.
" STOTT, BOISE AND STOUT, AND
T. H. WARD, *Attorneys for Defendants.*

142 1st. State your name, age and present place of residence.

2nd. Did you purchase section 32, township 9, north of range 4 west of Willamette meridian, Territory of Washington (now State)?

3rd. If so, the date of purchase, from whom purchased, and the amount paid for the same?

4th. Did you have any agreement, directly or indirectly, with James M. Radcliffe and Frank Smith, in reference to the purchase of said land before final proof and issuance of final duplicate receiver's receipt for said land?

5th. Where was your place of business during the year 1884? And how long did you reside there?

6th. Did you ever receive any notice of any kind, or did you have any knowledge that said entries of Frank Smith and James M. Radcliffe covering said section 32 had been held for cancellation, or that the same had been cancelled?

7th. State how and when you first learned that said entries had been cancelled by the Land Department?

143 *Answers to Direct Interrogatories.*

1st. Augustus N. Spratt, Oakland, Calif. Aged 61 years.

2nd. Yes.

3rd. 1884. From James M. Radcliffe and Frank Smith through my agent. Total amount paid out in connection with and for said section 32, including Smith and Radcliffe, my agent, and others, my personal expenses, taxes, legal charges, advice, etc. about $4400.

4th. No. I do not think that I had ever heard of them even.

5th. Alpena, Michigan. Thirty years.

6th. I have no recollection of having received any notice; and from the fact that I continued to pay taxes on section 32 for some years, I am confirmed in the belief that any information that I may have obtained was in the nature of hearsay.

7th. I cannot, further than has been indicated in my answer to question six.

(S'd) AUGUSTUS N. SPRATT.

STATE OF CALIFORNIA, } ss:
County of Alameda, }

I, C. K. Marshall, notary public, do hereby certify that the witness Augustus N. Spratt appeared before me and after being duly sworn his evidence was read and corrected by him, each No. of answer corresponding with the number of the question, after which he subscribed the same in my presence, on the 3rd day of November, 1899, at my office 1118 Broadway, Oakland, Alameda county, California, and I have personal knowledge of the said witness.

In witness whereof I have hereunto set my hand and official seal the day and year above written.

(S'd) C. K. MARSHALL,
Notary Public.

[Notarial Seal: C. K. Marshall.]

144 In the Superior Court of the State of Washington for the County of Cowlitz.

DAVID WHITNEY, JR., CHARLES STINCHFIELD, and James A. Remick, Trustee-, Plaintiffs,
vs.
A. N. SPRATT, Defendant.
} Cross-interrogatories.

Cross-interrogatories to be Propounded to the Witness A. N. Spratt.

1. Did you go upon section 32, or any portion of said section, prior to your purchase from Radcliffe and Smith?

2. Did you ever go upon said section 32 or any portion of said section?

3. How long had you known James M. Radcliffe or Frank Smith, or either of them, before your purchase from them of the different quarter sections, comprising section 32?

4. Where did you meet them, and at what place was the sale consummated between Radcliffe and Smith and yourself?

5. How much did you pay Radcliffe and Smith for the land, and how much did you pay for each quarter section. State fully the manner of payment.

6. Is it not a fact that you supplied Radcliffe and Smith with the necessary moneys to make entries and improvements on the different quarter sections of said section 32, under an agreement that the land should be taken up in their name and afterwards transferred to you?

7. Did you have any actual notice by personal observation of the character of the land in said section 32 as to whether the same was timber land or not?

8. Please examine the letter hereto attached, marked Exhibit A, and state if you wrote the same, and what was your object in writing it.

145 *Answer- to Cross-interrogatories.*

1st. Yes.

2nd. Yes.

3rd. I have no recollection of ever having known them at all prior to the purchase.

4th. I do not recollect of ever having met them.

5th. I think that I paid Radcliffe and Smith about $800 for each quarter section. I do not recollect the manner of payment.

6th. I do not recollect of ever having had any business whatever with Radcliffe and Smith or either of them prior to purchase of said section 32.

7th. Yes.

9th. I wrote the letter marked Exhibit A. I had been informed that my right to a title to that section 32 was considered to be good. I was also informed that Whitney and others would commence suit for the purpose of forcing me to quitclaim my interests. Whitney was a very wealthy man and I was not, and I felt that I could not

afford to enter into a lawsuit with any millionaire; so I wrote the letter hoping I might receive a liberal amount by way of compromise. I could not afford to quitclaim without reimbursement.

(S'd) AUGUSTUS N. SPRATT.

STATE OF CALIFORNIA, } ss:
County of Alameda, }

I, C. K. Marshall, notary public, do hereby certify that the witness Augustus N. Spratt appeared before me and after being duly sworn his evidence was read and corrected by him each number of answer corresponding with the numbers of the corresponding question, — which he subscribed the same in my presence on the 3rd day of November, 1899, at my office 1118 Broadway, Oakland, Alameda county, California, and I have personal knowledge of the said witness.

In witness hereof I have hereunto set my hand and official seal the day and year above written.

146

(S'd) C. K. MARSHALL,
[NOTARIAL SEAL.] *Notary Public.*

147 EXHIBIT A.

DEC. 26TH, 1898.

David Whitney, Jr., Chas. Stinchfield, and others.

GENTLEMEN: In 1883 I took what was considered to be the necessary measures to secure title from the U. S. Government to section 32, township 9, north, range 4 west State of Washington. I paid liberally to my agent—to the praties who made the supposed necessary locations and I also paid all other necessary expenses and charges, including the Government, in all about $4400. I know the section to be a valuable one. I looked it up and examined it myself. I received the usual title. But before the patent could be obtained from the Government the whole business was condemned. I do not understand how or why you could obtain a perfect title when you took precisely the same method that I had taken. I am a poor man and you are rich men. Now I am requested by your W. W. Curtiss who has *has* proceeded in law to cause me to relinquish my claim against the land and U. S. Government. Do you think that it is right or is it law for you to do what had been denied me. Please let me heard from you.

Yours truly,

(S'd) A. N. SPRATT.

Formerly of Alpena, Mich.

148 Filed Sep. 28 1900 C. S. Reinhart, clerk, by R. B. Crandall, deputy. In superior court State of Washington for county of Cowlitz. Whitney, Stinchfield & Remick, pl'ffs, vs. A. N. Spratt. Statement of facts on appeal. Filed August 14th, 1900. I. N. Bighle, clerk.

149 DAVID WHITNEY, JR., ET AL., Appellants, v. A. N. SPRATT, Respondent. } No. 3744. Filed April 24, 1901.

Suit commenced by plaintiffs against defendant to remove a cloud from plaintiffs' title to section 32, township 9, north, range 4 west, in Cowlitz county. Only the northeast and the southeast quarters of the section are in controversy upon appeal, plaintiffs having succeeded as to the other half of the section. The defendant answers, alleging that plaintiffs' claim to the northeast quarter of said section was deraigned through one Henness, who held under patent from the United States, and the southeast quarter was claimed by plaintiffs through one Walker who likewise held under patent from the Government; that such patents were wrongfully issued to Henness and Walker, and in truth and equity defendant is the owner of the two quarter sections, deraigning title to the northeast quarter from one Frank Smith and to the southeast quarter through one James M. Radcliffe; that Smith and Radcliffe entered respectively the said northeast and southeast quarters, as timber land, on May 26, 1883, under the "timber and stone" act of Congress, June 2, 1878, 20 Stat. 89, and made application to purchase the same, both applications being made on the same day; that they each complied with the law in relation to the purchase of timber land, and each paid the purchase price thereof to the Government and received a receiver's certificate therefor; that after the receipt of such certificates they, by warranty deed, duly transferred the respective tracts, for a valuable consideration, to A. N. Spratt, defendant; that on the 21st of January, 1886, the Commissioner of the General Land Office erroneously cancelled the entries of Smith and
150 Radcliffe, and thereafter issued the patents to Henness and Walker. The proceedings of the Land Department are set out with particularity, and the answer alleges that such proceedings were invalid because no notice was given to Spratt, the transferee of Smith and Radcliffe. It is also alleged that the Commissioner of the General Land Office erred in his construction of the timber-purchase act, in that he ruled that land which was chiefly valuable for timber but which could be cultivated after the timber was removed was not purchaseable under the act, and held the entry was void on that ground. Defendant prays that he may be declared the equitable owner of the two quarter sections, that plaintiffs be adjudged to hold the patents in trust for him, and that conveyance of the legal title be made to him. By stipulation all the evidence and proceedings in the Land Department are in the record. Defendant introduced competent testimony tending to show that the entries of Smith and Radcliffe were made in good faith; that the two quarter sections entered by them were in fact timber land more valuable for the timber than any other purpose, incapable of cultivation until the removal at great expense of the timber therefrom, and that such premises were in fact timber lands under the act of Congress.

As observed by counsel for appellants, two questions arise here:

1. Was Spratt, the transferee of the entrymen, Smith and Radcliffe, entitled to notice of the proceedings in the land office which resulted in the cancellation of their entries? It may be observed that the warranty deeds, executed by the entrymen conveying their lands to Spratt, were of record in the auditor's office of Cowlitz county before the contest for cancellation was instituted, and that the special agent, who made the examination and upon whose reports the proceedings were instituted, advised the Land Department of the transfers. It will thus be seen that knowledge of these transfers and of the interest of Spratt was conveyed to the Land Department before the notice of contest was given to the entrymen, and notice was directed to be given to the transferee by the Commissioner of the General Land Office,
151 but in fact was not given, and the transferee had no knowledge of the contest. The Commissioner of the General Land Office, after a hearing which was *ex parte*, cancelled the entries of Smith and Radcliffe, and thereafter issued the patents to Henness and Walker through whom plaintiffs deraigned title. It would seem upon these facts that the established rule as to notice pursued by the Land Department for many years, was violated in the proceedings for cancellation.

United States *v.* Copeland, 5 L. D. 170;
United States *v.* Richardson, 5 L. D., 253;
Windsor *v.* Sage, 6 L. D. 440;
United States *v.* Thomas, 9 L. D. 576;
Fleming *v.* Bowe, 13 L. D. 78;
United States *v.* Newman, 15 L. D. 224.

The courts will take judicial notice of the rules and decisions of the Land Department.

Caha *v.* United States, 152 U. S. 211.

The respective parties to the cause have also submitted a stipulation that knowledge of the rules and decisions of the Land Department is recognized in the hearing of this cause. But apparently the necessity of such notice to foreclose the rights of the transferee has been set at rest by the highest authority. In Guaranty Savings Bank *v.* Bladow, 176 U. S. 448, the pertinent facts for consideration here were that one Anderson filed his homestead application, thereafter commuted his homestead to a pre-emption entry, made final proof of his claim, and received a final certificate which was duly recorded in the proper county, and thereafter executed a mortgage upon said land in good faith, which mortgage was properly recorded. Thereafter the Commissioner of the General Land Office held the entry of Anderson for cancellation on the ground that proper proof of residence was not shown, and thereafter Bladow, defendant, contested the entry of Anderson, and gave due notice of the hear-
152 ing to Anderson, and upon said hearing Anderson's entry was cancelled. The mortgagee was not notified of the hearing. Upon these facts the court observed:

"But the cancellation, although conclusive as to the entryman,

upon all questions of fact, if made after notice to him would not be conclusive upon the mortgagee, if made without notice to such mortgagee and with no opportunity on its part to be heard. That is, it would not prevent the mortgagee, before the issuing of a patent, from taking proceedings in the Land Department, and therein showing the validity of the entry, or from proceeding before a judicial tribunal, against the patentee, if a patent had already issued, and therein showing the validity of the entry; such proof in each case would, however, have to be made by evidence other than the certificate which had been cancelled."

The defendant, in his answer, having alleged his equitable claim to the land in controversy, the invalidity of the cancellation of the entries of Smith and Radcliffe, and the lack of notice of the hearing in the Land Office to the transferee Platt, fully shows his right to a judicial hearing and determination of the controversy. He has not relied upon the certificate of the entries of Smith and Radcliffe, but has shown by evidence other than the certificates the validity of those entries. The findings of fact of the trial court show that the land in controversy was in fact timber land within the provisions of the act of Congress, and that the entries were made in good faith. We have reviewed the testimony and we fully approve the findings. We have examined with care the authorities adduced by counsel for appellants. The case of American Mortgage Company *v.* Hopper, 56 Fed. 67, determines only that the certificate of payment issued to a pre-emptor of public lands may be cancelled by the Land Department; that the certificate is merely an equitable interest in the entryman, and a purchaser from him before a patent issues cannot claim to be protected, as a *bona fide* purchaser, from cancellation of the certificate, on the ground that it is fraudulent and void. In that case the transferee had no notice, but he relied entirely on the validity of the certificate and did not show in fact that the entry was valid. In the same case, on appeal in the ninth circuit, 64 Fed., 553, it was determined that where the Land Department cancels after issuance to a pre-emptor of a final certificate, on the
153 ground that the entry was fraudulent, and issues a patent to another, the burden is on such pre-emptor or those claiming under him, in an action to recover the land from the patentee, to show that the department erred in adjudging the title to the defendant, and that the transferee was not entitled to protection as a *bona fide* purchaser. This is not inconsistent with the determination in Guaranty Savings Bank *v.* Bladow, *supra*. Some of the expressions used in the opinion in Cooke *v.* Blakely, 50 Pac. (Kan.) 981, do not seem to be in accord with the weight of authority.

2. Did the Commissioner of the General Land Office err in his construction of the timber act? We are inclined to conclude that he did. An examination of the facts before the Commissioner and his construction of the law discloses that he determined that the lands which were chiefly valuable for timber at the time of the entry, and then unfit for cultivation, were not within the provisions of the timber-purchase act. This construction was erroneous.

United States *v.* Budd, 144 U. S. 154, where facts of a similar nature were before the court.

The judgment of the superior court is affirmed.

REAVIS, *C. J.*

We concur:
FULLERTON, *J.*
ANDERS, *J.*
WHITE, *J.*

154 In the Supreme Court of the State of Washington.

SATURDAY, *May* 18, 1901.

DAVID WHITNEY, JR., ET AL., Appellants,
vs.
A. N. SPRATT, Respondent.
} No. 3744. Order.

Comes now the parties to this action by stipulation and gives the court to understand that David Whitney, Jr., one of the plaintiffs in this action, died on the 28th day of Nov., 1900, and that G. H. Thayer is the duly appointed administrator, and that D. C. Whitney and Charles Stinchfield are the trustees acting under his said will, and pray the court to substitute the said administrator and trustees as parties plaintiff in this action in the place and stead of the David Whitney, Jr., deceased, and the court being fully advised in the premises, it is now here ordered that the said G. H. Thayer, administrator, and Charles Stinchfield and D. C. Whitney, trustees, be and they are hereby substituted as parties plaintiff in this action in the place and stead of the said David Whitney, Jr., deceased.

155 In the Supreme Court of the State of Washington.

THURSDAY, *June* 13, 1901.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of this Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustees, Appellants,
vs.
A. N. SPRATT, Respondent.
} No. 3744. Judgment.

This cause having been heretofore submitted to the court on the transcript of the record of the superior court of Cowlitz county and upon the argument of counsel and the court having fully considered the same and being fully advised in the premises and having filed its opinion in writing it is now on this 13th day of June, A. D. 1901, on motion of Storr & Stout & T. H. Ward, of counsel for respondent, considered, adjudged and decreed that the judgment of the said superior court be and the same is hereby affirmed with costs, the

petition for rehearing denied, and that the said A. N. Spratt have and recover of and from the said David Whitney, Jr., by G. H. Thayer, administrator, *et al.*, and from the United States Fidelity and Guaranty Company of Baltimore, Maryland, surety, the costs of this action taxed and allowed at fifty-seven dollars, and that execution issue therefor. And it is further ordered that this cause be remitted to the said superior court for further proceedings in accordance with the opinion herein filed.

156 In the Supreme Court of the United States.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield, and James A. Remick, Trustee-, Plaintiffs in Error,

vs.

A. N. SPRATT, Defendants in Error.

To the honorable the chief justice of the supreme court of the State of Washington:

The petition of G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney and Charles Stinchfield, trustees under the will of David Whitney, Jr., deceased, substituted by order of court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, trustee, respectfully shows:

That on the 13th day of June, 1901, the supreme court of the State of Washington made and rendered a decree against your petitioners in a certain cause wherein your petitioners were complainants and A. N. Spratt was defendant, which decree affirmed a decree of the superior court of the State of Washington, for the county of Cowlitz, of date July 17th, 1900, and awarded the defendant A. N. Spratt judgment for the costs and disbursements taxed at $57.00; and decreed among other things as follows:

That the defendant A. N. Spratt is the equitable owner and entitled to the possession of the northeast quarter and the southeast quarter of section thirty-two (32), township nine (9), north, range four (4), west of the Willamette meridian, Cowlitz county, State of Washington; and that plaintiffs hold the legal title thereto in trust for the said defendant A. N. Spratt;

That defendant A. N. Spratt have a decree that the plaintiffs execute a proper deed conveying said northeast quarter and said southeast quarter of said section thirty-two within 30 days to said defendant A. N. Spratt; and that in default of such deed of conveyance that said decree stand for and be treated as such deed of con-

157 veyance; and remitted said cause to the said superior court of the State of Washington, for Cowlitz county, with directions to enter said decree in accordance with said decision of said supreme court; that said decree was amend- as to clerical error in title August 6th, 1901; all of which will fully appear by reference to the record and proceedings in said cause;

That said supreme court of the State of Washington is the highest court in said State of Washington in which a decision in said suit could be had and your petitioners claim the right to remove said judgment and decree to the Supreme Court of the United States by a writ of error under the statutes of the United States authorizing writs of error to State courts, particularly section 709, Revised Statutes, and the judiciary act of March 3, 1891; because, at the trial of said suit in the court below your petitioners claimed to be the owners in fee-simple of the said northeast quarter and the southeast quarter of section thirty-two, township nine (9), north, range four (4), west of the Willamette meridian, under a patent therefor from the United States; and the defendant A. N. Spratt claimed to be the equitable owner of the said land as assignee of James M. Radcliffe and Frank Smith, said James M. Radcliffe having entered the southeast quarter of said section thirty-two as timber land and having received a receiver's final receipt therefor August 20, 1883, and the said Frank Smith having entered said northeast quarter of said section thirty-two as timber land and received a receiver's final receipt therefor August 20, 1883, both of which final receipts had been cancelled by the Commissioner of the General Land Office prior to the issuance of patents under which your petitioners claim; and in the decision of said cause in the court below it became necessary for said supreme court of the State of Washington to pass upon and decide the question as to whether or not the defendant A. N. Spratt as assignee of said James M. Radcliffe and Frank Smith was entitled to notice of the proceedings in the General Land Office touching the cancellation of said receiver's final receipts; and it became and was necessary in the decision of said cause by the said supreme court of the State of Washington to construe the act of Congress in re-
158 lation to the public lands of the United States and the manner of acquiring title thereto; and the said supreme court of the State of Washington in said decision in said cause decided that the act of the Commissioner of the General Land Office in cancelling said final receipts of the said James M. Radcliffe and the said Frank Smith was without authority of law and void; and the said supreme court of the State of Washington further decided that said A. N. Spratt as assignee of the said James M. Radcliffe and Frank Smith was entitled to notice of the proceedings of the Land Department touching the cancellation of said entries of the said Frank Smith and James M. Radcliffe; and the said supreme court of the State of Washington further decided that the said A. N. Spratt was entitled to recover in said suit without proofs being made before the superior court of the State of Washington at the trial of said cause of the good faith of the entries of said Frank Smith and said James M. Radcliffe other than as was disclosed by the record of the land office at Vancouver introduced in evidence; and said supreme court of the State of Washington in said cause decided that the patents issued for said northeast quarter and said southeast quarter of said section thirty-two under which your petitioners claim title to said land were issued without authority of law; and said supreme court of the State of Washington in deciding said cause decided as a

matter of law that the Commissioner of the General Land Office in cancelling said entries of said Frank Smith and James M. Radcliffe erred in its construction of the timber act and that a decision of the land office holding that said land was timber land was a decision of a question of law and not of fact; in all which holdings said supreme court of the State of Washington committed error; all of which appears in the records of said case, which is herewith submitted;

Wherefore, your petitioners pray the allowance of a writ of error returnable into the Supreme Court of the United States and for citation and supersedeas; and they will ever pray.

DOLPH, MALLORY, SIMON & GEARIN,
Solicitors & Attorneys for Petitioners in Error.

159 STATE OF WASHINGTON, *ss:*

Desiring to give the petitioners an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition, it is ordered that a writ of error be allowed to said court, and that the same be made a supersedeas upon the petitioners to file a bond to be approved by the chief justice of this court in the penal sum of one thousand dollars.

In testimony whereof witness my hand this 20th day of September, 1901.

JAMES B. REAVIS,
Chief Justice of Supreme Court of State of Washington.

Indorsed: Petition for writ of error. Filed Sept. 20th, 1901. C. S. Reinhart, clerk.

160 In Supreme Court of the United States.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustee-, Plaintiffs in Error,

vs.

A. N. SPRATT, Defendant in Error.

Comes now G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney and Charles Stinchfield, trustee- under the will of David Whitney, Jr., deceased, substituted by order of court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, trustee-, plaintiffs in error, by their counsel, and respectfully represent: that they feel themselves to be aggrieved by the proceedings and decree of the supreme court of the State of Washington in the above-entitled cause, and assign error thereto as follows:

First. The said supreme court erred in holding and deciding that the defendant A. N. Spratt is the equitable owner and entitled to

the possession of the northeast quarter and the southeast quarter of section thirty-two (32), township nine (9), north, range four (4), west of the Willamette meridian, Cowlitz county, State of Washington, and that plaintiffs in error hold the legal title thereto in trust for the said defendant A. N. Spratt.

Second. The said supreme court of the State of Washington erred in holding and deciding that the defendant A. N. Spratt have a decree that the plaintiffs execute a proper deed conveying said northeast quarter and said southeast quarter of said section thirty-two (32), within 30 days, to said defendant A. N. Spratt; and that in default of such deed of conveyance that said decree stand for and be treated as such deed of conveyance.

Third. The said supreme court of the State of Washington erred in remitting said cause to the said superior court of the State of Washington, for Cowlitz county, with direction to enter said decree in accordance with said decision of said supreme court.

161 *Fourth.* The said supreme court of the State of Washington erred in affirming the decision of the superior court of the State of Washington, for the county of Cowlitz, of date July 17, 1900, and in not reversing said decision.

Fifth. The said supreme court of the State of Washington erred in holding and deciding that the act of the Commissioner of the General Land Office in cancelling the final receipts of James M. Radcliffe and Frank Smith, set out in the record in this case, was without authority of law and void.

Sixth. The said supreme court of the State of Washington erred in holding and deciding that the defendant A. N. Spratt as assignee of James M. Radcliffe and Frank Smith was entitled to notice of the proceedings of the Land Department touching the cancellation of said entries of said Frank Smith and James M. Radcliffe.

Seventh. The said supreme court of the State of Washington erred in holding and deciding that said defendant A. N. Spratt was entitled to recover in said suit without proofs being made before the superior court of the State of Washington at the trial of said cause of the good faith of the entries of said Frank Smith and said James M. Radcliffe other than as was disclosed by the records of the land office at Vancouver, introduced in evidence.

Eighth. The said supreme court of the State of Washington erred in holding and deciding that the patents issued for said northeast quarter and said southeast quarter of said section thirty-two (32), under which your petitioners claim title to said land, were issued without authority of law.

Ninth. The said supreme court of the State of Washington erred in holding and deciding as a matter of law that the Commissioner of the General Land Office in cancelling said entries of said Frank Smith and James M. Radcliffe erred in his construction of the timber acts, and that a decision of the Land Office holding that said land was timber land was a decision of a question of law and not of fact.

162 *Tenth.* The said supreme court of the State of Washington erred in holding and deciding that on the trial of said cause

in the superior court of the State of Washington, for Cowlitz county, defendants were entitled to introduce any proof as to whether or not said land was timber land, and in not holding and deciding that the decision of the land office at Vancouver cancelling the entries of said Smith and Radcliffe was final and could not be reversed or set aside in this proceeding.

Eleventh. The said supreme court of the State of Washington erred in holding and deciding that the proof offered by said Spratt at said trial in the superior court of the State of Washington for Cowlitz county was admissible or effective in law to establish the claim set up by said defendant, or for any purpose;

Wherefore, the said plaintiffs in error pray this honorable court to examine and correct the errors assigned, and for a reversal of the decree of the said supreme court of the State of Washington entered in the above-entitled cause.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys and Solicitors for Petitioners in Error.

Indorsed: Assignments of error. Filed Sept. 20, 1901. C. S. Reinhart, clerk.

163 In the Supreme Court of the United States.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustee-, Plaintiffs in Error,

vs.

A. N. SPRATT, Defendant in Error.

Know all men by these presents: That we G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney, and Charles Stinchfied, trustees under the will of David Whitney, Jr., and Charles Stinchfield and James A. Remick trustee-, as principals and the United States Fidelity and Guaranty Company as sureties, are held and firmly bound unto A. N. Spratt in the full and just sum of one thousand dollars *dollars* to be paid to the said A. N. Spratt, his executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 20th day of September, in the year of our Lord nineteen hundred and one.

Whereas, lately at a session of the supreme court of the State of Washington in a suit pending in said court between G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney and Charles Stinchfield, trustees under the will of David Whitney, Jr., deceased, substituted by order of court for David Whitney, Jr., and Charles Stinchfield, and James A. Remick, trustee-, complainants and plaintiffs, and A. N. Spratt, defendant, a final decree was rendered against the said complainants and plaintiffs and the said complainants and plaintiffs having obtained the

allowance of an appeal and writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the foregoing suit, and a citation directed to the said A. N. Spratt citing and admonishing him to be and appear at the Supreme Court of the United States at Washington within 60 days from the date thereof.

164 Now, therefore, the condition of the above obligation is such that if the said G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney and Charles Stinchfield, trustees under the will of David Whitney, Jr., deceased, substituted for David Whitney, Jr., and Charles Stinchfield, and James A. Remick, trustee, shall prosecute said writ of error to effect and answer for all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed and delivered in presence of:

G. H. THAYER,
Administrator of Estate of David Whitney, Jr., Deceased.
D. C. WHITNEY AND
CHAS. STINCHFIELD,
Trustee- under Will of David Whitney, Jr., Deceased,
Substituted by Order of Court for David Whitney, Jr.,
& Chas. Stinchfield, and
JAMES A. REMICK, *Trustee,*
By JNO. W. GEARIN, *Attorney.* [SEAL.]

[Seal of Company.]

THE UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By CHAS. KING AND
W. I. AGNEW,
Agents and Attorneys-in-fact.

Approved to operate as a supersedeas by

JAMES B. REAVIS,
Chief Justice of the Supreme Court of the State of Washington.

Indorsed: Bond. Filed Sept. 20th, 1901. C. S. Reinhart, clerk.

165 In the Supreme Court of the United States.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustee-, Plaintiffs in Error,

vs.

A. N. SPRATT, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable judges of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney and Charles Stinchfield, trustees under the will of David Whitney, Jr., deceased, substituted by order of court for David Whitney, Jr., and Charles Stinchfield, and James A. Remick, trustee, plaintiffs in error, and A. N. Spratt, defendant in error, wherein was drawn in question the validity of a treaty of, or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the

166 title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the service of this writ upon you in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 21st day of September, in the year of our Lord, nineteen hundred and one.

[Seal United States Circuit Court, District of Washington.]

A. REEVES AYRES,
Clerk of the United States Circuit Court for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

Allowed to operate as a supersedeas.

JAMES B. REAVIS,
Chief Justice of the Supreme Court of the State of Washington.

167 [Endorsed:] No. 3744. In the Supreme Court of the United States. G. H. Thayer, adm'r, *et al.*, plaintiff-, *vs.* A. N. Spratt, defendant. Writ of error. Filed Sep. 23 1901 C. S. Reinhart, clerk, by —— ——, deputy. Dolph, Mallory & Simon, attorneys for —.

168 In the Supreme Court of the United States.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustee-, Plaintiffs in Error,

vs.

A. N. SPRATT, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to A. N. Spratt, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States at Washington within 60 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Washington, wherein G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney and Charles Stinchfield, trustees under the will of said David Whitney, Jr., deceased, substituted by order of court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, trustee-, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment therein rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Reavis chief justice of the supreme court of the State of Washington this 28th day of September in the year of our Lord, one thousand nine hundred and one.

JAMES B. REAVIS,
Chief Justice.

[Seal of the Supreme Court, State of Washington.]

Attest: C. S. REINHART, *Clerk.*

169 STATE OF OREGON, } ss:
County of Multnomah, }

On the 23rd day of September in the year of our Lord, nineteen hundred and one, personally appeared before me, a notary public in and for the said State of Oregon, John M. Gearin, and makes oath that he delivered a true copy of the within citation to George Stout and Stott & Stout attorneys for defendant A. N. Spratt in Multnomah county Oregon this 23rd day of September 1901.

JOHN M. GEARIN.

Subscribed and sworn to before me this 23rd day of September, 1901.

{Seal of Frank T. Woodward, Notary Public, State of Oregon.}

FRANK T. WOODWARD,
Notary Public for County and State Aforesaid.

170 [Endorsed:] No. 3744. In the Supreme Court of the United States. G. H. Thayer, adm'r, *et al.* plaintiff- *vs.* A. N. Spratt, defendant Citation Filed Sep. 24 1901 C. S. Reinhart clerk. By —— —— deputy. Dolph, Mallory & Simon, attorneys for —.

171 In the Supreme Court of the State of Washington.

G. H. THAYER, Adm'r, ET AL., Plaintiffs in Error,
v.
A. N. SPRATT, Defendant in Error.
} No. 3744. Clerk's Certificate.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above-entitled cause, and that in pursuance of the writ of error herein I herewith transmit the same to the Supreme Court of the United States, together with the original citation and the original writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 13th day of November, 1901.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

172 In the Supreme Court of the United States.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased; D. C. Whitney and Charles Stinchfield, Trustees under the Will of David Whitney, Jr., Deceased, Substituted by Order of Court for David Whitney, Jr., and Charles Stinchfield and James A. Remick, Trustee-, Plaintiffs in Error,
vs.
A. N. SPRATT, Defendant in Error.

It is hereby ordered that the time within which the record in this cause may be filed in the Supreme Court of the United States

be enlarged and that plaintiff in error may have thirty days from this date within which to file transcript of record in the Supreme Court of the United States.

REAVIS,
Chief Justice, Supreme Court, Washington.

[Seal of the Supreme Court, State of Washington.]

Attest: C. S. REINHART, *Clerk.*

173 [Endorsed:] No. 3744. In the Supreme Court of the United States. G. H. Thayer, adm'r, — plaintiffs in error, *vs.* A. N. Spratt, defendant in error. Order. Dolph, Mallory, Simon & Gearin, attorneys for pl'ffs.

Endorsed on cover: File No. 18,346. Washington supreme court. Term No. 493. G. H. Thayer, administrator of the estate of David Whitney, Jr., deceased, D. C. Whitney & Charles Stinchfield, trustees under the will of David Whitney, Jr., deceased, substituted for David Whitney, Jr., and Charles Stinchfield & James A. Remick, trustee-, plaintiffs in error, *vs.* A. N. Spratt. Filed December 7th, 1901.

FILE COPY.

Office Supreme Court, U.S.
FILED
JAN 10 1903
James H. McKenney, Clerk.

BRIEF OF PLAINTIFFS IN ERROR.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM 1901.

No. 207.

G. H. THAYER, ADMINISTRATOR OF THE ESTATE OF DAVID WHITNEY, JR., DECEASED; D. C. WHITNEY AND CHARLES STINCHFIELD, TRUSTEES UNDER THE WILL OF DAVID WHITNEY, JR., DECEASED, SUBSTITUTED FOR DAVID WHITNEY, JR., AND CHARLES STINCHFIELD, AND JAMES A. REMICK, TRUSTEE, PLAINTIFFS IN ERROR,

vs.

A. N. SPRATT.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Plaintiffs in Error.

T. H. WARD,
GEO. C. STOUT,
Attorneys for Defendant in Error.

In Error to the Supreme Court of the State of Washington.

FILED

(18,346.)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased, D. C. WHITNEY and CHARLES STINCHFIELD, Trustees under the Will of David Whitney, Jr., Deceased, Substituted for DAVID WHITNEY, JR., and CHARLES STINCHFIELD, and JAMES A. REMICK, Trustee,

Plaintiffs in Error.

vs.

A. N. SPRATT,

Defendant in Error.

18,346.

Brief of Plaintiffs in Error.

This is a writ of error issued to the Supreme Court of the State of Washington to review a decree of that Court, which decree affirmed the decree of the Superior Court of the State of Washington, holding defendant in error to be the equitable owner of the southeast quarter (SE¼) and the northeast quarter (NE¼) of Section thirty-two (32), Township nine (9), north range four (4), west of the Willamette meridian, and directing plaintiffs in error to execute a deed to defendant in error for said property.

STATEMENT OF THE CASE.

This suit was brought by the plaintiffs in error against the defendant in error to remove a cloud from plaintiffs' title to the whole of section thirty-two, township nine north, range four west. It is alleged in the bill that the plaintiffs are the owners of all of said section thirty-two.

That there are on the records of Cowlitz county, Washington, four deeds, to-wit:

1. One deed from Frank Smith to A. N. Spratt; date, October 13, 1884; recorded March 20, 1884; warranty in form; purporting to convey to said A. N. Spratt the northeast quarter of said section thirty-two; which deed was recorded on page 81 of Book "I," records of deeds of said county.

2. One deed from James M. Radcliffe to A. N. Spratt; warranty in form; of date, February 13, 1884; purporting to convey to said A. N. Spratt the southeast quarter of said section thirty-two; which deed was recorded March 20, 1884, at page 98, Book "I," Records of Deeds of Cowlitz, Washington.

3. One deed from James M. Radcliffe to A. N. Spratt for the southwest quarter of said section thirty-two, and one deed from Frank Smith to A. N. Spratt for the northwest quarter of said section thirty-two; both of said deeds being recorded in the records of deeds for Cowlitz county, Washington. Inasmuch as plaintiffs' contention as to these two deeds was sustained in the court below and the deeds cancelled, no question arises on this appeal as to them, or as to the title to the northwest or southwest quarter of said section thirty-two.

It is further alleged in the bill that these two deeds—the one from Smith, and the other from Radcliffe—for the northeast quarter and the southeast quarter of said section thirty-two constitute a cloud on plaintiffs' title; and the prayer of the bill is that they be cancelled.

The defendant answered and as to these two quarter sections said that Frank Smith had entered the northeast quarter of section thirty-two and James M. Radcliffe had entered the southeast quarter of said section as timber land, and on May 26, 1883, made application to purchase the same, both applications being made on the same day. That they each complied with the law in relation to purchase of timber land, and each paid to the government the amount prescribed by law, to-wit, four hundred dollars, and each received on August 20, 1883, a receiver's certificate; and that on February 13, 1884, each for a valuable consideration sold his quarter section to defendant A. N. Spratt for the sum of $800, and executed to Spratt the deeds described in the complaint and sought to be cancelled.

It is then alleged in the answer that after said Smith and Radcliffe had made their final payment to the government, as above set out, and after Sprat had so purchased said two quarter sections and had obtained and recorded his deed therefor, and on, to-wit, the 21st day of January, 1886, the Commissioner of the General Land Office cancelled said entries of said Smith and Radcliffe and subsequently issued a patent for said northeast

quarter of section thirty-two to Benjamin L. Henness and a patent for the southeast quarter of section thirty-two to Ellis Walker; and that plaintiffs deraign title through said Henness and Walker.

The proceedings of the land department leading up to the cancellation of Smith's and Radcliffe's entries are set out in detail in the answer with a particularity unnecessary to be repeated here. But it is alleged by the defendant that the land department proceedings were invalid, and the pretended cancellations of the two entries a nullity because of the fact that no notice was ever served on Spratt of the holding of these entries for cancellation or of the cancellation of them. It is then claimed by defendant that the title now held by plaintiffs deraigned from the government through Henness and Walker is held in trust for defendant and a decree is asked to that effect.

A demurrer to this answer was filed, which was overruled, and plaintiffs replied, denying the new matter in the answer and putting the case at issue. The case was tried by the court, and the findings of fact and conclusions of law are found on pp. 25-41 of Transcript of Record.

The pleadings are quite lengthy, but there are no disputed *facts*, except two, that is, 1st, as to the character of the land on these two quarter sections—whether or not it was timber land at the time of the entry, and, 2d the good faith of the entries.

In the trial in the court below both sides stipulated into the case the complete records of the land department; copies of which records, together with all the testimony taken on this trial, are found in full in the Statement of Facts. To avoid the necessity of a reference to those records and to present the two points involved in this writ of error as clearly as may be, the following facts may be considered to have been established by the testimony and stipulation.

1. On May 26, 1883, Frank Smith, a citizen of the United States, made application at the Land Office at Vancouver, Wash., to purchase the northeast quarter of section thirty-two, township nine north, range four west, under the act of Congress of June 3, 1878, as timber land.

2. On August 20, 1883, no adverse claim having been filed, said Frank Smith made his proof covering his said application in the form and manner provided by the statute; paid the United States $400, and received therefor a receiver's duplicate receipt executed in due form.

3. That on February 13, 1884, said Frank Smith executed to A. N. Spratt his warranty deed for said quarter section, reciting a consideration of eight hundred dollars, which deed was recorded in the records of deeds of Cowlitz county, Wash., March

20, 1884, on page 81, book "I," records of deeds of said county.

4. That on October 3, 1884, S. P. C. Stubbs, a special agent of the General Land Office, reported in writing to the Commissioner of the General Land Office that said quarter section was agricultural land and was not timber land; and that the said entry was fraudulent and made for speculative purposes; and said report was accompanied by the affidavits of C. N. Hogan and B. A. Dietz, substantiating the correctness of the report.

5. That it appeared from said written report of said Stubbs that Frank Smith had executed to Spratt the deed above described and that the same was of record in Cowlitz county Wash.

6. That thereafter, on October 21, 1884, based on the report of said S. P. C. Stubbs, special agent, the Commissioner of the General Land Office suspended action on said entry of said Frank Smith and notified the receiver and register of the Land Office at Vancouver, Washington, by letter, of the fact that action had been suspended upon said entry, and directed said register and receiver to appoint a time for hearing before said register and receiver of evidence to be offered by the United States and said Frank Smith touching the validity of said entry. That in his said letter notifying the said register and receiver of the suspension of said entry of said Frank Smith said Commissioner directed the said register and receiver of the Land Office at Vancouver to issue due notice of the time and place of said hearing, informing the entrymen of the nature and substance of the special agent's report, and advising him that in default of an appearance at said hearing his entry would be finally cancelled. That in said letter said Commissioner also directed that if said register and receiver had knowledge that the land had been transferred for them to also notify the transferee. That said Commissioner in said letter to the register and receiver also stated that it appeared from the report of said special agent that said Smith had transferred the land by warranty deed, dated March 13, 1884, to the defendant herein A. N. Spratt.

7. That thereafter, by letter "P," dated October 17, 1885, said Commissioner of the General Land Office of the United States notified said register and receiver that said order for hearing on the report of Special Agent S. P. C. Stubbs concerning said timber entry of said Frank Smith was rescinded and the entry in question held for cancellation on the showing made in said special agent's report, and directed said register and receiver to notify claimant, informing him of the nature and substance of the special agent's report, and advising him that he would be allowed sixty days in which to appeal to the Secretary of the Interior or to show cause why his entry should be sustained in accordance with circular of instructions of July 31, 1885, and that if no

appeal be taken and he failed to show cause why his entry should be sustained, the same would be finally cancelled.

8. That thereafter, on October 29, 1885, Fred W. Sparling, the register of said Land Office at Vancouver, Washington, deposited in the postoffice at Vancouver, Washington, a registered letter addressed to Frank Smith, Oak Point, Cowlitz county, Washington (now state) Territory, the same being the postoffice address of said Frank Smith. That in said letter as aforesaid said Fred W. Sparling, register of said Land Office, stated that said timber entry of said Frank Smith is held for cancellation upon the report of said Special Agent S. P. C. Stubbs, further stating that in said report, it is alleged, that the tract in question is covered with fir, cedar and hemlock trees; that it is good agricultural land, gently rolling, somewhat rough in places, and can be successfully cultivated after the timber is removed, and that said entry of said Frank Smith is fraudulent and made for the purposes of speculation. It was also stated in said letter addressed to said Frank Smith, at Oak Point, Cowlitz county, Washington (now state) Territory, that the said Frank Smith would be allowed sixty days within which to file an appeal from the action hereof to the Honorable Secretary of the Interior, or to show cause why his said entry should be sustained; and if he failed to file an appeal or show cause why his entry should be sustained within said time, his entry should be finally cancelled. That said letter of said Fred W. Sparling, register, was never received by said Frank Smith, and was thereafter returned to said register of the Land Office at Vancouver by the postmaster at Oak Point, Washington (now state) Territory, marked "uncalled for."

9. That on January 21, 1886, the Commissioner of the General Land Office cancelled the entry of said Frank Smith for said quarter section and notified the register and receiver at Vancouver, Washington, that said entry was cancelled.

10. That no notice was ever served upon the defendant A. N. Spratt of any of the proceedings in the Land Office touching the cancellation of said entry.

11. That A. N. Spratt was a non-resident of the State of Washington during all the time covered by the Land Office proceedings above referred to, residing at Alpena, Michigan, and neither he nor Frank Smith ever appeared before the land department in said proceedings for the cancellation of said entry.

12. That on April 9, 1888, said entry of Frank Smith having been cancelled, Benjamin L. Henness made a homestead entry on said quarter section, commuted the same to cash, and on June 25, 1890, a patent was issued to said Benjamin L. Henness, and plaintiffs' claim title through mesne conveyances from

said Henness, and were in possession of said land at the time of bringing this suit and have paid taxes thereon since August, 1890.

Precisely the same facts, except as to the name of entryman, exist with reference to the southeast quarter of said section thirty-two.

James M. Radcliffe filed his application to purchase this quarter section May 26, 1883; made his proof August 20, 1883; received his duplicate receipt the same day; deeded to Spratt February 13, 1884; the special agent reported the land to be agricultural and not timber, and the entry fraudulent October 3, 1884; the same proceedings were had in the Land Office resulting in the cancellation of Radcliffe's entry, January 21, 1886.

The regularity of plaintiffs' title is not questioned—that is, it is admitted that the chain is complete from the government patentee to plaintiffs; but it is claimed that the cancellation of Smith's and Radcliffe's entries is void because made without notice to Spratt.

Three questions arise in this writ of error.

I.

Was Spratt entitled to notice of the proceedings in the Land Office resulting in the cancellation of the entries?

II.

The Land Department having cancelled the entries of Smith and Radcliffe, on the ground of their being fraudulent, and that the land was agricultural and not timber land, is not that a decision of a question of fact and is not the judgment of the officers of the Land Department conclusive and not reviewable by the courts?

III.

Conceding that Spratt was entitled to notice of the proceedings to vacate the Smith and Radcliffe entries, and that he did not have such notice, is he not compelled in his suit to show by his testimony the existence of the same facts that the entrymen, Smith and Radcliffe, would have been compelled to show upon the hearing ordered before the register and receiver of the Land Office?

ARGUMENT.

I.

Was Spratt entitled to notice of the proceedings in the Land Office resulting in the cancellation of the entries?

We are not unaware of the decisions of this Court in the case of Guaranty Savings Bank vs. Bladow, 176 U. S., 448, and in Hawley vs. Diller, 178 U. S., 476.

In these cases this Court held that in proceedings looking to the cancellation of a homestead or timber land entry in the Land Department a mortgagee or transferee should be notified. But the opinions in these cases must be read in connection with the facts before the Court in each case. In Hawley vs. Diller there was no question but that the notice had been given. There was personal notice of the contest served upon the assignee of the entryman. In Savings Bank vs. Bladow, the mortgagee, after the cancellation of the entry, but *before* the issuance of patent, filed in the Land Office proof of its interest and an application that patent be issued to it as mortgagee of the entryman. Presumably the Savings Bank *could* have been notified by personal service of the finding of the proceedings in the Land Department. And because it was not notified when it could have been and ought to have been, this Court sent the case back to the lower court to the end that the mortgagee might "seek such other relief as it may be advised" in the premises. But this case is different. Here it appears from the record that at the time of the cancellation of the entries of Smith and Radcliffe, Spratt was a non-resident of the state of Washington. It does not appear that his place of residence was known to the department. It does not appear that there is or was at the time of the cancellation of these entries any law providing a method of service under the circumstances. Personal service could not be had, of course, because the residence of Spratt was unknown, and service by publication would be no service unless some statute made it so. *Spratt could not be served at all in any manner known to the law.* What should the department have done under the circumstances? If the contention of defendant in error is correct, it could do nothing. Of what use to proceed and cancel the entries if at any time in the future when all the proofs of the fraudulent nature of the entry have been lost and the witnesses all dead and after the government has patented the land to some one else, Spratt may emerge from his hiding and claim the land because he was not notified of the cancellation proceedings. It would follow that the government couldn't patent the land to Smith or Radcliffe because the

entries were fraudulent, and it couldn't cancel the entries because no service could be made upon Spratt. The government couldn't deal with this land in any way until Spratt should appear, and if he never appeared no patent could ever be issued for the land. It is not likely that this Court will sustain such a contention. It may be that when service on the purchaser from the entryman is practicable the department should notify such purchaser of proceedings to cancel the entry so that he may have an opportunity to protect his equity, but before the assignee can be heard to complain of the want of such notice it must appear that such notice could have been given, and if it was given proof could and would have been furnished by the assignee, which would have prevented the cancellation of the entry. The claim of defendant in error here is set out in his answer as follows: (pp. 12 and 13, Transcript of Record) "The defendant further answering the complaint avers that prior to the time he purchased said land and paid for the same he had no notice, knowledge or intimation or information whatever that said James M. Radcliffe was not entitled to make such entry of said land or that said land was not subject to entry under the said act of June 3rd, 1878, but that this defendant in good faith, without any such notice, knowledge, intimation or information purchased said land from said James M. Radcliffe and paid the sum of $800 to him therefor, believing that the said Radcliffe was the owner thereof, and had a good right to purchase the same under said act of June 3rd, 1878, and that said land was subject to entry and purchase under said act as timber land. And this defendant is the *bona fide* purchaser of said land, and these plaintiffs and their predecessors in interest took and now hold and have held the title to said land in trust for this defendant and they are now the trustees of this defendant of the title to said land."

This whole contention is wrong and has been repeatedly so held by the courts. The plea of *bona fide* purchases is in effect the initiating of a new claim of title. The pleader bases his title upon his deed and his good faith in taking it. He says in effect that no matter what the defects or irregularities may be in the title of his grantors, *he* gets a good title because he has paid full value in good faith without notice. But this never applies to the purchases of a mere equity. And an equity was all that Spratt got or could get by his purchase from Smith and Radcliffe. He could not get the legal title, because that was still in the government. He got only such right as Smith and Radcliffe had, and he bought at his peril. In the case of American Mortgage Co. vs. Hopper, 64 Fed., 559, the Court of Appeals for the 9th Circuit thus announces the law governing this class of cases:

"Appellant claims that it is a *bona fide* purchaser for value, and that it is entitled to protection upon this ground. The law is well settled that the purchaser of an equitable title takes only such interest in the property as his grantor had at the time of his purchase. Waddel, by his certificate of purchase, only obtained the right to a patent for the land, provided his acts were legal, and in all respects such as to warrant the issuance of a patent to him. His rights were in a measure dependent upon the subsequent action of the land department, within its legitimate authority, of ascertaining whether he had complied with all the prerequisites prescribed by law, and whether he was lawfully entitled to the land in question. His purchase of the land was subject to the rules and regulations of the land department. It is true that the entry was sufficient to satisfy the register and receiver of the local land office; but it was subject to the control and supervision of the Commissioner of the General Land Office, and the action of the register and receiver was liable to be reversed on appeal. When appellant purchased the land it took it subject to the final action of the land department, and to such proceedings as might thereafter be had in the courts to affirm or set aside the rulings of the officers of such department in regard thereto. It purchased the land before the issuance of a patent. The legal title was still in the government. It therefore obtained, by its purchase, only an equitable interest in the land, and is not, for the reasons stated, entitled to protection as a bona fide purchaser. Shirras v. Caig, 7 Cranch, 34; Vattier v. Hinde, 7 Pet. 252; Boone v. Chiles, 10 Pet. 177, 210; Smith v. Custer, 8 Dec. Dep. Int. 269; Root v. Sheilds, Woolw. 341. Fed. Cas. No. 12,038; Randall v. Edert, 7 Minn. 450 (Gil. 359); Shoufe v. Griffith (Wash.), 30 Pac. 93. In Smith v. Custer, *supra*, Secretary Vilas clearly enunciated the principles applicable to the case. He said: "The pre-emption purchaser takes, by his final proofs and payment and his certificate of purchase, only a right to a patent for the public lands in case the facts shall be found by the General Land Office and the Interior Department, upon appeal, to warrant the issuance of it. Whatever claim to patent he possesses by virtue of his payment and certificate is dependent upon the further action of the department, and its future finding of the existence of the conditions, and his compliance in fact with the prerequisites prescribed by law to the rightful acquisition of the public lands he claims. This being so, it is plain that the purchaser can acquire from the entryman no greater estate or right than the entryman possesses."

Spratt not being a *bona fide* purchaser and being precluded from setting up that defense, the question of notice or not notice becomes unimportant.

In Cal. Redwood Co. vs. Litle, 79 Fed. Rep. 856, the case was this: One Bohal made pre-emption entry, received certificate of purchase and sold to the complainant. The Commissioner of the General Land Office cancelled Bohal's entry without giving complainant any notice of the intended cancellation, and the land was subsequently patented to respondent. The suit was brought to declare respondent trustee of the legal title for complainant's benefit. It was contended in that case, that the cancellation of Bohal's entry was a nullity because the Redwood Company, his grantee, was not notified. That the Redwood Company took without notice of any defects in Bohal's title, and was a bona fide purchaser for value, and could not be affected by any action of the land department subsequently had without notice to the Redwood Company. Answering this contention, the Court (Morrow, J.) says (p. 856-57):

"In my opinion, the complainant in this case has failed, upon its proofs, to show that it had, or now has, a better right to the land than the respondent Litle has under his patent. It is contended, however, that the ruling of the Commissioner of the General Land Office cancelling the entry of Bohal was void and of no effect for the reason (1) that the complainant received no notice of such proposed action, and was therefore deprived of its property rights without due process of law; (2) that the ruling of the Commissioner does not appear to have been approved by the Secretary of the Interior and the Attorney General, as provided in section 2451 of the Revised Statutes; and (3) it is claimed, as before stated, that in any event, the complainant is a bona fide purchaser, and cannot be deprived of the land in controversy by the subsequent issuance of a patent to another. With reference to the first and third propositions, I deem it unnecessary to enter into any discussion of the case, for the reason that the identical questions were passed upon by the Circuit Court of Appeals for this circuit in the case of Mortgage Co. v. Hopper, already referred to, and are therefore binding upon this court, under the doctrine of *stare decisis*. A reference to that decision will show that it involved a suit precisely similar to the one in the case at bar, and that the facts relating to the original fraudulent entry, subsequent cancellation by the Commissioner of the General Land Office, and the subsequent issuance of a patent to a later and bona fide entryman, are closely analogous. The two propositions referred to and now urged in this case were elaborately and ably considered by the Circuit Court of Appeals, as well as other propositions common to both cases, and they were decided adversely to the contention of the complainant. I shall therefore content myself by simply referring to, and resting my decision upon the authority of, that case."

In the case of Cooke v. Blakely, 50 Pac. 981, the facts were as follows: On July 23, 1879, L. W. Cooke filed application to purchase the land in dispute, and on May 21, 1880, made final proof therefor, paid for same and received duplicate receiver's receipt. On the same day he sold the land to Edward Cooke, by warranty deed, which was duly recorded. On July 1, 1880, Edward Cooke executed a mortgage on the land to Thomas S. Koutz. On February 18, 1880, one Blakely entered the same land, made declaratory statement, and on March 22, 1883, made final proof, paid for the land and received receiver's certificate. On November 30, 1885, patent was issued to Blakely. On August 25, 1880, Blakely began a contest to cancel Cooke's entry. Notice of contest was served on Edward Cooke only, and no notice was served on Koutz, the mortgagee. The register and receiver cancelled Cooke's entry, and this decision was affirmed January 30, 1882. The case was then appealed to the Secretary of the Interior, who affirmed the decision of the Commissioner on January 17, 1883. No notice of the contest proceedings was served on Koutz, and he had no actual knowledge of the same or of Blakely's claim to the premises until after the contest proceedings were over. Koutz brings suit to foreclose his mortgage and makes all parties defendants. Clearly if Koutz was not entitled to notice in that case, Spratt is not in this. The point of plaintiffs' contention is stated on page 982 of the decision thus:

"Plaintiffs in error contend that the cancellation of Cooke's entry was erroneous for these reasons: First, that it was done without notice to Koutz and without any knowledge by him of the institution or pendency of the contest."

The court overruled this claim, and said in reference thereto (p. 982):

"In vol. 1, Dec. Dept. Int. 106, Commissioner McFarland, in an official communication to a register and receiver concerning a contest case, ruled as follows: 'This office does not recognize purchasers or third parties prior to issuance of patent. . . . The doctrine of bona fide purchasers is not applicable to one who purchases from a settler before patent. As the settler has only an equity, the purchaser must abide by the disposition of the case by this department, irrespective of notice or recognition.' See further as sustaining this proposition, Featherspill's case, 4 Land Dec. Dept. Int. 570; Hill's case, 5 Land Dec. Dep. Int. 276; Joline's case, Id. 589; U. S. v. Lawrence, 16 Land Dec. Dep. Int. 47.

"The return of the purchase money was not a condition precedent to the cancellation of Cooke's entry, nor would repayment be authorized in a case where the entry is cancelled on account

of false testimony in the final proof." Walsh's case, 5 Land Dec. 319; Woodward's case, 2 Land Dec. 688; Reynold's case, 12 Land Dec. 131; Hatch's case, 12 Land Dec. 607.

That the department had a right to cancel the Smith-Radcliffe certificates cannot be questioned. In Guaranty Bank vs. Bladow, 176 U. S. 457, this Court said: "When Anderson obtained the decision of the register and receiver upon his application for the land it was subject to the power of the land department to reverse the judgment of those officers and upon facts showing that the entry was fraudulent the department had power to cancel it. *This could be done upon the same evidence which was before the register and receiver and at least upon notice to the party entering the land.*

When the department in this case cancelled the Smith and Radcliffe certificates, whether that cancellation was rightfully or wrongfully made, these certificates ceased to exist for any purpose. These certificates carried no title. They never were even evidence of title—they were but evidences of the existence of conditions and the performance of acts which would entitle the holder to title. The right of the holder of the certificate to receive the legal title does not come from the certificate, but arises because of the doing of certain things and the existence of certain conditions which entitled him primarily to the certificate. The certificate is prima facie evidence that these things have been done and those conditions exist and that the holder of it is entitled to patent.

In Guaranty Bank vs. Bladow, *supra*, the Court said:

"Our conclusion upon the whole case is that the cancellation of the entry *was valid as regards Anderson* and that the effect of such cancellation was to *prevent the plaintiff in error from using the entry as prima facie evidence of the right of Anderson to patent.*" And this, although no notice was served upon plaintiff in error of the proceedings to cancel. Applying that rule to this case we see that Spratt, whether the certificates were cancelled rightfully or wrongfully as to him, could not have re-lied even on proceedings in the land department upon these certificates after the order cancelling them. He cannot therefore use them in any manner in this suit. As to him, it is as though they had never existed—whether he received notice of their cancellation or not. And this order, as against Smith and Radcliffe, cancelling the entries as being fraudulent, is not reviewable by the courts, because it is a decision of a question of fact, and this Court has always held that where there has been a hearing or where the entryman had an opportunity to be heard, the decision of the land department on a question of fact is final. If Smith and Radcliffe had not sold to Spratt and if this suit was brought against them by plaintiff in error, neither Smith nor Radcliffe

would have any standing whatever in court to question the title of plaintiff in error deraigning title through government patent. As to them, all their right was foreclosed by the proceedings in the land department. But it is claimed now that the defendant Spratt has some greater rights. What are they? Conceding that Spratt was entitled to notice of the cancellation proceedings in the Land Office, let us inquire what would he have had to do if he had received such notice? Clearly he would have been compelled to furnish proof of the good faith of the entries of Smith and Radcliffe. If he didn't furnish said proof the order of cancellation would have been made after notice to him the same as it was made without notice to him. If he would have been compelled to furnish proof of the good faith of the entries before the register and receiver, by what system of reasoning can it be deduced that he is exempt from that obligation now? It must be remembered that while this is a suit to remove a cloud from the title, yet the defendant goes further than simply denying plaintiffs' right to a decree and himself seeks affirmative relief. He asks the Court to decree that he is the equitable owner of the property and that plaintiff holds the legal title in trust for him, and prays the Court to compel plaintiffs to make him a deed for the property. Not content with denying plaintiffs' right, he becomes a petitioner for affirmative relief. Is it too much to ask that before that relief is given him he must show himself entitled to it? He is here attacking our patent not for any fraud or irregularity in the proceedings leading up to the issuance if it, but because as he says the patent should have been issued to Smith and Radcliffe, and if he had been notified of the proceedings to cancel the Smith and Radcliffe entries he could have shown that. Let him show it now.

In Lee vs. Johnson, 116 U. S. p. 49, this Court, in speaking of proceedings in court to correct errors in the land department, said:

"The Court does not interfere with the title of a patentee when the alleged mistake relates to a matter of fact, concerning which those officers may have drawn wrong conclusions from the testimony. A judicial inquiry as to the correctness of such conclusions would encroach upon a jurisdiction which Congress has devolved exclusively upon the department. It is only when fraud and imposition have prevented the unsuccessful party in a contest from fully presenting his case, or the officers from fully considering it, that a court will look into the evidence. It is not enough, however, that fraud and imposition have been practiced upon the department, or that false testimony or fraudulent documents have been presented; it must appear that they affected its determination, which, otherwise, would have been

in favor of the plaintiff. He must in all cases show that but for the error or fraud or imposition of which he complains, he would be entitled to the patent. It is not enough to show that it should not have been issued to the patentee. It is for the party whose rights are alleged to have been disregarded that relief is sought, not for the government, which can file its own bill when it desires the cancellation of a patent unadvisedly or wrongfully issued. Bohall v. Dilla, 114 U. S. 47; Sprake v. Pierce, 115 U. S. 408."

Authorities could be multiplied to any extent maintaining this doctrine. But it is unnecessary to do so. By what rule, then, is the sufficiency of this proof to be offered by defendant in error to be tested? Clearly by the provisions of the statute providing for timber land entries. That statute is found on page 167, vol. 1, Supplement to Revised Statutes. Section 2 of the act reads as follows:

"Sec. 2. That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the appellant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not directly or indirectly made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except himself; *which statement must be verified by the oath of the applicant* before the register or the receiver of the land office within the district where the land is situated.

"And if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same.

"And any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void."

Without making the affidavit provided for in this section no

application to purchase could be made by anyone. But the application only initiates the proceeding. The statements contained in it may or may not be true. And the department may at any time cause the truth of these statements to be inquired into. As is said in Hawley vs Diller, 178 U. S. p. 488: "The land department has authority at any time before a patent is issued to enquire whether the original entry was in conformity with the act of Congress." And when the good faith of the entry is challenged by the government, has the government not the right to say that the applicant shall submit himself for examination as to the truth of the statements contained in his original affidavit? The proof upon the hearing must at least be the same as the proof upon the application, and the entryman must come and answer. Conceding, then, that the defendant was entitled to his "day in court" in the land department, he would have had a right to appear in response to the notification that the entry was held for cancellation, and show *by the oath of the applicant* (Smith and Radcliffe) the existence of the conditions set out in the statute. He certainly has no greater right here. He is having his "day in court" now. And the laboring oar is his. In United States v. Steeterson, 50 Fed. Rep. 508, the Court of Appeals for the 8th Circuit said:

"In a contest involving the title to land wherein a person claims adversely to the United States, it is open to such claimant notwithstanding the legal title remains in the United States to prove that by performance on his part of the requisite acts he has become the equitable owner of the land and that the United States holds the legal title in trust for him. But as the claimant in such case has not received a patent or formal conveyance and has not become possessed of the legal title, *he is required to show performance on his part of the acts which when done entitle him under the law to demand a patent for the land. When evidence of this kind is offered on behalf of the claimant*, it is open to the United States to meet it by proof of any fact or facts which, if established, will show that the claimant has not become the real owner of the realty. If it be true in a given case that the entry of the land was not made in good faith, but in fraud of the law, certainly it cannot be said that the claimant has become the equitable owner of the land and that the United States is merely a trustee holding the legal title for his benefit."

The Supreme Court of North Dakota in deciding the case of Guarantee Bank vs. Bladow, says, 69 N. W. p. 43: "As he is compelled to pursue the legal title in the hands of one who has succeeded to the rights of the government he is of necessity obliged to make out as against such person a legal right to demand the patent from the government. This he may do by showing that his entry was in fact legal. He cannot use the can-

celled certificate for that purpose, for to insist upon his right to use it is to assume the legality of the entry—the very question to be established. He could not, as a matter of fact, use it as *prima facie* evidence in the land department before cancellation in the trial of the issue whether his entry was legal."

This evidence must be offered by the applicant and the government is not required to offer any evidence of the fraudulent nature of the entry. This exact point arose and was decided in Parsons vs. Vieske, 61 N. W. 1041, when the Court says:

"It is further claimed that the local officers erred in requiring Sam Kiser to offer evidence to sustain the entry before any evidence had been introduced by the government. But this was a matter for the decision of the department. The Commissioner or Secretary might have held that this was error and for that reason might have sent the proceedings back for further hearing. But they did not. The sustained the local officers. Assuming that they were wrong, their loss cannot be collaterally reviewed by the courts."

It sufficiently appears from these authorities that if notice had been served upon Spratt of the proceedings to cancel these entries and if he had appeared before the register and receiver the burden would have been upon him to show the good faith of the entry in each case, and a full compliance with the statute and in the manner provided by the statute.

The same burden is upon him now. To hold otherwise would be to hold that the grantee from the original entryman is in a better position because of the cancellation of the certificate than the entryman himself was before the cancellation. And this will hardly be claimed by the defendant in error here. If defendant is rightfully in court at all petitioning for affirmative relief, he is here "*to prove the validity of the original entries*" —and he hasn't done it. For the Court's convenience we print at the end of this brief *all* the oral testimony taken at the trial upon this subject.

It will be seen therefrom that no attempt was made to prove anything except that the land was timber land. Neither Smith nor Radcliffe was called, and no reason is given why they were not called, and not even an attempt was made to show that the entries were made in good faith. This does not comply with the requirements of the statute—would not have been sufficient if offered in the hearing ordered by the Commissioner and cannot be sufficient here. It is no answer to this to say that there is a stipulation on file stipulating as to this record, the record of the land department, including the affidavits of Smith and Radcliffe, "to be considered by the Court." This stipulation merely certifies to the fact that there is such a record and identifies its

contents. It goes to the fact of the existence of those affidavits and not to the truthfulness of their statements. The claim that these copies of affidavits can now be considered by the Court as original testimony here is an afterthought. That it is not made seriously is sufficiently evident from the fact that the defendant called the witnesses Osborn and Hogan to prove the nature of the land—a fact that was as much covered by these affidavits as the fact of the good faith of the entry. To say that the existence of the affidavits is proof of the truth of their contents is to say that the burden of proof is on the government upon the hearing before the register and receiver to show the bad faith of the entries before calling on the entryman for proof in support of them, the very point decided in Parsons vs. Vieske, *supra*, to be not well taken. The record of these entries by Smith and Radcliffe whereby they sought to acquire a whole section of government land that they might sell it at a profit *at once* upon the completion of final proof is a record that might well have challenged the attention of the special agent of the government and prompted inquiry. Frank Smith takes the NE ¼ Sec. 32 as a timber claim and the NW¼ as a pre-emption. James M. Radcliffe takes the SE¼ Sec. 32 as a timber claim and the SW¼ as a pre-emption. And this is how they did it.

TIMBER LAND.

Frank Smith.

May 26-83, applied to register to purchase NE¼ Sec. 32.
Aug. 20-83, paid $400; received final receipt.
Feb'y 13-84, executed deed to Spratt.

James M. Radcliffe.

May 26-83, applied to register to purchase SE¼ Sec. 32.
Aug. 20-83, paid $400, received final receipt.
Feb'y 13-84, deeded to Spratt.

PRE-EMPTIONS.

Frank Smith.

May 26-83, filed declaratory statement, NW¼ 32.
Dec. 12-83, filed notice intention to make final proof.
Jan. 30-84, made final proof.
Feb. 2-84 filed final proof with register; received final receipt.
Feb. 13-84, deeded to Spratt.

James M. Radcliffe.

May 26-83, filed declaratory statement SW¼ 32.
Dec. 12-83, filed notice intention to make final proof.
Jan. 30-84, made final proof.
Feb. 2-84, filed final proof and received certificate.
Feb. 13-84, deeded to Spratt.

The identity of the dates and the method of procedure in each case could leave little doubt in the mind of any impartial agent of the government sent out to investigate such transactions that these entries were all fraudulent and that Smith and Radcliffe were a couple of speculators availing themselves of the government's generosity to obtain title to this land by perjury and get it out of their hands as quickly as possible. Final proof in each of the timber entries was made August 20, 1883. But the final proof in the pre-emption cases was not made until February 2d, (12th ?) 1884. Evidently the sale could not be consummated until all four quarters were ready for delivery. The purchaser, whoever he was, must have it all. So they wait until the pre-emption entries are completed, and on February 13, 1884, deed it all to Spratt. That the sale of the timber lands was made before this is shown by the pleadings. The answer of Spratt (p. 10 Transcript Record) says: "That prior to the 13th day of February, 1884, this defendant purchased said southeast quarter of section 32 from the said James M. Radcliffe and paid him therefor the sum of $800, and that thereafter, and on the 13th day of February, 1884, the said James M. Radcliffe by his said deed duly executed and delivered to this defendant duly conveyed the said land by said deed with full covenants of warranty to this defendant," etc. On page 5 (Transcript of Record) said answer contains identically the same statement with reference to Smith, as follows: "That prior to the 13th day of February, 1884, this defendant purchased said northeast quarter section 32 from the said Frank Smith and paid him therefor the sum of $800, and that thereafter, and on the 13th day of February, 1884, the said Frank Smith by his said deed duly conveyed the said land by deed with covenants of warranty to this defendant."

The execution of this deed apparently completed all the business Smith and Radcliffe ever had in the state of Washington, as they are not again heard of. When the special agent reported adversely to the granting of patent in these cases October 4, 1884, neither Smith nor Radcliffe could be found and have never appeared since. That is the record upon which defendant stands in this case.

The title of the plaintiffs is through a government patent under which they were in possession at the time of beginning of this suit, and they have been paying taxes on said property, as proved by the lower court, since 1890.

To establish by a decision of this court the rule invoked by the defendant in this suit would unsettle titles and make it impossible for anyone to determine by an examination of the records of deeds of the county where the land is situated whether he has a title or not.

These plaintiffs brought upon the faith of a record title going back to a government patent, the source of all titles in this country. The deeds held by defendant are no part of that chain of title and could not have been found by any abstracter searching the title. We are asked now to go behind this patent and set it aside because of the facts appearing in this case. The request has no merit, neither legal nor equitable. No attempt was made at the trial in the court below to show the good faith of these entries. If the methods of these entrymen and their assignees are to be countenanced it would practically bar the government from cancelling entries in any case or on any account. Smith and Radcliffe enter the land and get a final certificate and then disappear. Nobody knows where they are. They sell to a non-resident, and nobody knows where he is. The government wishes to cancel the entries, but cannot find anyone to serve the notice on. And this court is asked to decide that so long as the parties keep out of sight nothing can be done, and the government cannot deal with the land. This request should be refused.

There is another reason why the claim set up by the defendant should not be allowed. It is a stale claim. The defendant, if he had any right at the time of the cancellation of this entry to have the case reopened or heard as to him, has lost that right through his laches. More than sixteen years have elapsed since the pretended purchase by the defendant from Smith and Radcliffe. The defendant has never gone into the possession of the property or attempted to do so, has never exercised acts of ownership over it; never paid taxes upon it, but has allowed these plaintiffs to go into possession and pay the taxes, and has never made any protest, or set up any claim to the property until in this proceeding. Courts of equity will confer no relief to parties so situated, and it is not necessary that the laches of the defendant or the staleness of his claim should be pleaded.

Sullivan v. Portland Ry. Co., 94 U. S. 811.

12 Am. & Eng. Enc. of Law, p. 609.

We respectfully submit that the decisions of the lower court should be reversed and the prayer of plaintiffs' complaint be allowed.

DOLPH, MALLORY, SIMON & GEARIN,

Attorneys for Appellant.

John M. Gearin.

Appendix to Brief.

TESTIMONY.

C. M. Hogan, called as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Direct examination by Raleigh Scott:

Q 1. Whereabouts do you live, Mr. Hogan?

A. 1. I live in Cowlitz county.

Q. 2. How long have you lived in Cowlitz county?

A. 2. I think about twenty-five years.

Q. 3. What, if any, official position did you hold in that county?

A. 3. I have been a justice of the peace for twelve or fourteen years.

Q. 4. Was you ever a surveyor?

A. 4. I have surveyed a great deal, but not in the way of any official capacity.

Q. 5. You may state, Mr. Hogan, whether or not you examined the northeast quarter of section thirty-two, township nine, north of range four west, Cowlitz county, Washington, in company with Special Agent Stubbs; and the southeast quarter of the same section, township and range, that is in company with Special Agent of the United States, Stubbs, about September or October, 1884?

A. 5. I did.

Q. 6. In company with whom did you examine these tracts?

A. 6. With Mr. Stubbs and Mr. Dietz. (or Deats).

Q. 7. With B. F. Dietz?

A. 7. Yes, sir; with B. F. Dietz.

Q. 8. Where is B. F. Dietz now at?

A. 8. He went to Minnesota, or Colorado, I believe.

Q. 9. I understand he is dead.

A. 9. Yes, sir; so I am told.

Q. 10. Do you know his wife?

A. 10. I am slightly acquainted with her.

Q. 11. Now what is the character of that land with reference to the timber upon it?

Mr. Gearin. I object to any testimony being received at this time touching the character of the land, for the reason the same is incompetent and immaterial and because the records introduced show that the land department passed upon that question as a question of fact, and the decision of the land department is conclusive.

Court. The Court will permit the testimony and the ques-

tions may be argued at the final submission. The question may be asked as to the quality of the timber.

A. 11. The timber is excellent. It is as good as any in that section of the country.

Q. 12. In Cowlitz county?

A. 12. Yes, sir; Cowlitz county.

Q. 13. About how many feet of saw timber would you estimate is on the land?

A. 13. At the time we examined it, we measured off what we considered an ordinary acre of land and estimated the amount that each tree would give, and in calculating found we could get considerable over two hundred thousand feet.

Q. 14. State if about that time, or since, you have examined a great deal of timber land for the government of the United States?

A. 14. I have examined a number of tracts, perhaps sixty or seventy.

Q. 15. In what part of the country?

A. 15. In that part: Cowlitz and Wahkiakum counties.

Q. 16. What would you say about that being a quarter section or half section of good timber; was there any better timber in that part of the country?

A. 16. It is as good as any I ever examined. In fact, there is none better in that part of the country.

Q. 17. Well, what would you say about the quality?

A. 17. It is large to the acre.

Q. 18. Now is that land especially valuable for cultivation or timber?

A. 18. No; no land there but what is covered with timber. It would have to be cleared in order to be cultivated.

Q. 19. Well, after it is cleared, what would you say; is it good for agricultural purposes, or not?

A. 19. Yes, after it is cleared, it is worth that. It would have to be cleared first.

Q. 20. Well, then, what would you say as to its chief value in its then condition, when you examined it—its timber or soil for cultivation?

A. 20. In its existing condition I should say timber value.

Q. 21. Chief value?

A. 21. Chief value, yes, sir.

Q. 22. State if you informed Agent Stubbs that you would testify that the claimant took the northeast quarter of said section for speculation?

Mr. Gearin. Objected to as incompetent.

Mr. Stott:

Q. 23. Did you give Stubbs any reason to believe that you would so testify?

Mr. Gearin. Objected to as incompetent.

Mr. Stott:

Q. 24. Did you have any intimation or reason to think that the claimant, Frank Smith, had taken up that claim for speculation?

A. 24. I had no reason to think so, because I did not know Frank Smith, or any of them, or any of the parties, but my knowledge was simply of the land as I examined it.

Q. 25. Had you ever had any intimation that Frank Smith had taken that timber claim for speculation?

Mr. Gearin. Objected to as incompetent.

Court. Objection sustained.

Mr. Stott:

Q. 26. Now, what would you say about the southeast quarter taken by James Radcliffe. Had you any reasons to believe that Radcliffe took the land for speculation?

Mr. Gearin. Objected to as before.

Court. The objection is overruled.

Witness:

A. 26. *I know nothing concerning them whatever. I know none of the parties, either before or since I examined the land My knowledge, as stated before, is simply of the land as I examined it.*

Q. 27. Did you say you examined the southeast corner also?

A. 27. I examined the whole section.

Q. 28. All about the same?

A. 28. Yes, sir.

Q. 29. And its chief value was for timber?

A. 29. For timber in the condition it was when I examined it.

Q. 30. In its then condition?

A. 30. Yes, sir.

Cross examination, conducted by Mr. Gearin:

Q. 31. Mr. Hogan, you were a witness at the solicitation of Mr. Stubbs to examine this land, and signed the affidavit as to the character of the land, did you not, at that time?

A. 31. Yes, sir; I was a witness in the examination of that land at the instance of Mr. Stubbs.

Q. 32. You went on the land with Mr. Stubbs for the purpose of becoming a witness as to its character, that is, whether it was agricultural or not?

A. 32. Yes, sir.

Q. 33. It was for that purpose you went there?

A. 33. Yes, sir.

Q. 34 There is a certified copy in the record in this case reported to be your affidavit. Have you read it?

A. 34. I read one. I don't know whether it is the one you refer to or not.

Q. 35. I will ask you if that affidavit is like this: Regarding these two quarter sections of timber land, and speaking of the soil you described as "a clay land, generally rolling and covered with a heavy growth of fir, cedar and hemlock trees, and said, 'I consider this good agricultural land,' and could be profitably cultivated after the timber is removed," Did you say that?

A. 35. I did.

Q. 36. Was that true?

A. 36. I believe so.

Re-direct examination, conducted by Mr. Stott:

Q. 37. Your idea is in order to be cultivated properly the timber would have to be taken off?

A. 37. After the timber is cut off it would become good land to cultivate.

Q. 38. But until it is cleared it is not fit to cultivate?

A. 38. Of course not.

Q. 40. What kind of timber, that is, was the timber valuable?

A. 40. Yes, sir; it was very valuable.

Q. 41. On both of the quarter sections?

A. 41. Yes, sir; the whole section.

Q. 42. Did you have any conversation with Mr. Stubbs as to whether this was good agricultural land or not?

Mr. Gearin: Objected to for the reason the same is incompetent and immaterial.

Court: The objection is sustained.

Robert Osborn, being called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination, by Raleigh Scott:

Q. 43. Where do you live, Mr. Osborne?

A. 43. In, Portland, Oregon.

Q. 44. How long have you lived in Portland, Oregon?

Q. 45. How old are you?

A. 45. Fifty-nine years.

Q. 46. Are you acquainted with the land in question?

A. 46. Yes, sir.

Q. 47. Have you examined it?

A. 47. I have.

Q. 48. When?

A. 48. Let me see. Last fall. I can tell you the date (referring to memoranda), September 4th.

Q. 49. Ninety-eight?

Q. 49. Ninety-nine.

Q. 50. What experience have you had in examining timber lands?

A. 50. Pretty much all my life.

Q. 51. Where? In the West here or ———

A. 51. In Michigan, Wisconsin, Minnesota, Washington and Oregon.

Q. 52. Well, now state what you saw. Give us your views.

A. 52. Concerning the timber land, you mean?

Q. 53. Did you examine the northeast quarter of section thirty-two, town 9, N. R. 4, west?

A. 53. I did.

Q. 54. Describe the land with reference to the timber upon it?

Mr. Gearin: I object for the same reasons previously given.

Court: The Court will permit the question to be asked. And it may be argued at the final submission.

A. 54. There was a heavy growth of timber. A very heavy growth. But I put it that the northeast quarter would cut one hundred and twenty-five or thirty-five thousand to the acre, running thirty per cent. cleared, but not including all the timber on the land.

Q. 55. You mean only the fir would run one hundred and thirty-five to the acre, or all the timber?

A. 55. Yes, sir; not running less than thirty per cent. cleared. There is some hemlock which I do not include. I do not include that at all.

Q. 56. What is the chief value of that land, for timber or agriculture?

A. 56. The entire value is only timber, in my judgment.

Q. 57. In its present condition?

A. 57. Yes, sir.

Q. 58. Could not cultivate it in its present condition, at all?

A. 58. No, sir.

Q. 59. How far is this land from the Columbia river?

A. 59. About two miles.

Q. 60. What opportunity is there for taking these logs to the river?

A. 60. Could take them by Mill Creek. Could go that way, or could take them out by railroad.

Q. 61. Well, what do you say as to the southeast quarter?

A. 61. Same character as the northeast; same quality of timber, but not quite so much timber.

Q. 62. How much would you say was on that tract?

A. 62. About one hundred thousand to the acre. It is the same character of timber, and there might be as much timber,

but on account of the badly broken country, can't save as much on that as you can on the northeast.

Q. 63. Because the character of the surface soil is broken?

A. 63. Yes, sir.

Q. 64. How much, if any, of that could be cultivated in its present condition?

A. 64. I don't think any of it.

(No cross-examination.)

It is stipulated by the attorneys in this case in open court, that the Court take judicial notice of any rules, regulations or decisions of the Land Department pertaining hereto.

The deposition of A. N. Spratt is considered read.

DEPOSITION OF A. N. SPRATT.

Direct Interrogatories and Answers.

1st. State your name, age, and present place of residence.

Ans. Augustus N. Spratt, Oakland, Calif., aged 61 years.

2d. Did you purchase section 32, township 9, north of range 4 west of Willamette Meridian, Territory of Washington (now State)?

Ans. Yes.

3rd. If so, the date of purchase, from whom purchased, and the amount paid for the same?

Ans. 1884. From James M. Radcliffe and Frank M. Smith, through my agent. Total amount paid out in connection with, and for, section 32, including Smith and Radcliffe, my agent, and others, my personal expenses, taxes, legal charges, advice, &c., &c., about $4400.00.

4th. Did you have any agreement, directly or indirectly, with James M. Radcliffe and Frank Smith, in reference to the purchase of said land before final proof and issuance of final duplicate Receiver's receipt for said land?

Ans. No. I do not think I ever heard of them, even.

5th. Where was your place of residence during the year 1884. And how long did you reside there?

Ans. Alpena, Michigan. Thirty years.

6th. Did you ever receive any notice of any kind, or did you have any knowledge that said entries of Frank Smith and James M. Radcliffe covering section 32 had been held for cancellation, or that the same had been cancelled?

Ans. I have no recollection of having received any notice; and from the fact that I continued to pay taxes on section 32 for some years, I am confirmed in the belief that any information that I may have obtained was in the nature of hearsay.

7th. State how and when you first learned that said entries had been cancelled by the Land Department?

Ans. I cannot, further than has been indicated in my answer to question six.

AUGUSTUS N. SPRATT.

CROSS INTERROGATORIES AND ANSWERS.

1st. Did you go upon section 32, or any portion of said section, prior to your purchase from Radcliffe and Smith?

Ans. Yes.

2d. Did you ever go upon said section 32, or any portion of said section?

Ans. Yes.

3rd. How long had you known James M. Radcliffe or Frank Smith, or either of them, before your purchase from them of the different quarter sections comprising section 32?

Ans. I have no recollection of ever having known them at all prior to the purchase.

4th. Where did you meet them, and at what place was the sale consummated between Radcliffe and Smith and yourself?

Ans. I do not recollect of ever having met them.

5th. How much did you pay Radcliffe and Smith for the land, and how much did you pay for each quarter section? State fully the manner of payment.

Ans. I think that I paid Radcliffe and Smith about $800 for each quarter section. I do not recollect the manner of payment.

6th. Is it not a fact that you supplied Radcliffe and Smith with the necessary money to make entries and improvements on the different quarter sections of said section 32, under an agreement that the land should be taken up in their name and afterwards transferred to you?

Ans. I do not recollect of ever having had any business whatever with Radcliffe and Smith, or either of them, prior to purchase of said section 32.

7th. Did you have any actual notice by personal observation of the character of the land in said section 32, as to whether the same was timber land or not?

Ans. Yes.

9th. Please examine the letter hereto attached, marked Exhibit A, and state if you wrote the same, and what was your object in writing it.

Ans. I wrote the letter marked Exhibit A. I had been informed that my right to a title to that section 32 was considered to be good. I was also informed that Whitney and others would commence suit for the purpose of forcing me to quitclaim my

interests. Whitney was a very wealthy man and I was not, and I felt that I could not afford to enter into a law suit with any millionaire; so I wrote the letter hoping I might receive a liberal amount by way of compromise. I could not afford to quitclaim without reimbursement.

AUGUSTUS N. SPRATT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

G. H. THAYER, Administrator of the Estate of David Whitney, Jr., Deceased, D. C. WHITNEY and CHARLES STINCHFIELD, Trustees under the Will of David Whitney, Jr., Deceased, Substituted for DAVID WHITNEY, JR., and CHARLES STINCHFIELD, and JAMES A. REMICK, Trustee. — *Plaintiffs in Error,*

vs.

A. N. SPRATT, — *Defendant in Error.*

18,346

Brief of Defendant in Error.

STATEMENT OF THE CASE.

The Statement of Facts set out at pages 3 to 4, Brief of Plaintiffs in Error is substantially correct except that some of the undisputed facts are left out. The cause was brought by plaintiffs in error against the defendant in error, Spratt, to remove a cloud from the title claimed by them to certain lands in Cowlitz County, Washington. The deeds complained of in their complaint being two certain warranty deeds to Spratt from Smith and Radcliff, covering two quarter sections of land taken up by them under the timber and stone act of June 3, 1878. The sale of these lands to Spratt was made about six months after final proof of entry, and for the sum of $1600. The deeds conveying said land were recorded in the County where the lands were situate. Defendants' first further and separate answer sets up that Spratt is in fact the

equitable owner of these lands; that he purchased the same from James M. Radcliff and Frank Smith, who had made final proof and received final certificates, and that the same were wrongfully cancelled. That the plaintiffs deraign their pretended title to said lands through deeds from subsequent entrymen who had obtained patents from the Government. That the entries of Smith and Radcliff were cancelled on an ex parte hearing before the Land Department upon notice mailed to the original entrymen at their former places of residence but that Spratt never received any notice or had any knowledge of the holding of the entries for cancellation, nor any notice or knowledge of the proceedings in the Land Department. It is further alleged and admitted that the report of the Special Agent of the Land Department based upon which the entries were held for cancellation showed that Smith and Radcliff, after making final proof, transferred the lands to A. N. Spratt, by warranty deeds, and that said deeds were recorded in the office of the County Clerk of Cowlitz County, where the lands were situate. It is further alleged with particulartiy that the entries were in fact legal and valid. And the third further and separate answer alleges that the officers of the Land Department cancelled said entries under a mistaken construction of said timber and stone act of June, 1878, that is, they held and ruled erroneously, that land covered with a heavy growth of valuable timber, if it could be successfully cultivated after the timber was removed, then that such lands were not chiefly valuable for the timber thereon, and were not subject to entry as timber lands under said act of June 3, 1878, although the timber on such lands might be their chief value and such lands might not at all be cultivated in their then condition.

This erroneous construction prevailed in the Land Department at this time and until the decision of this Court in the case of U. S. v. Budd & Montgomery, 144 U. S. 154.

It is also claimed that the defendant Spratt was a bona fide purchaser.

The prayer for relief asks the Court to decree that defendant is the equitable owner of the lands in controversy, and that the plaintiffs hold the legal title thereof in trust, etc.

The reply consists of a general denial of the allegations contained in the further and separate answer of the defendant; and then proceeds to set forth the proceedings in the Land Department concelling the entries under which Spratt claims. It does not set up that Spratt was a party to the cancellation, or that any kind of notice was ever given him by the department. And after setting up these proceedings, the reply in the case of each entry concluded with the following: "And plaintiffs plead said holding and decision by the Commissioner of the General Land Office as to the character of said land as a conclusive bar to the claims of defendant set up in his separate answer herein to said ——— quarter of Section 32, etc."

This was the only defense outside of the general denial, specifically set up by the plaintiffs to bar the defendant's equitable title to this land.

The case came on for trial before the Superior Court for the County of Cowlitz, and State of Washington.

Oral testimony, the reading of the deposition of A. N. Spratt, and all the testimony and proceedings of the Land Department being included in Exhibits "A" and "B," were offered in evidence in accordance with stipulation of counsel (see stipulation marked Exhibit "M," commencing at foot of page 74, printed Abstract of Record). The case was tried before Judge A. L. Miller, who, based on said evidence, made full findings of fact in which he sustained nearly all the material allegations contained in defendant Spratt's further and separate answer, except that he did not allow the contention of bona fide purchaser on the ground that there could be none before patent had been issued, and, therefore, made no finding of fact covering this contention. He, however, made findings that the original entries of Smith and Radcliff were in fact legal and valid. That they were wrongfully cancelled by the

officers of the Land Department under a misconstruction of the timber and stone act of June, 1878. That during all the times these proceedings were pending in the land department the officers of that department had actual knowledge that Spratt had purchased these lands from the original entrymen, and that he was never served with notice of the proceedings, and did not appear either in person or by counsel. The findings of fact are full and complete and will be found in the printed Abstract of Record, commencing at page 25, Findings Nos. 1-47.

There were also two other quarter sections taken up under the pre-emption law involved in the suit, but the Court found with the plaintiffs as regards these, on account of the failure of proof as to the required improvements.

Based on the findings of fact, the Court made a decree that the defendant was the equitable owner of the land covered by the two timber entries of Smith and Radcliff, and that the plaintiffs held the legal title in trust, etc.

From this decree the plaintiffs appealed to the Supreme Court, and in a well-considered opinion the decree of the lower Court was affirmed. In the opinion the Court found that Spratt was entitled to notice of the action of the Land Department respecting the cancellation of these entries and that as they failed to give him notice, the department's decision cancelling the entries did not preclude him from having his day in court to prove their validity.

The Court also in its opinion states that it has examined the evidence, and approve the findings of fact of the trial Court.

Throughout the whole case it was the contention of counsel, as shown by his reply, and objection to the testimony of the witness C. N. Hogan (page 46, printed Abstract of Record) that the decision of the officers of the Land Department cancelling the entries bound the defendant Spratt.

POINTS AND AUTHORITIES.

I.

This Court has no jurisdiction to review the judgment of the state Court, for the reason that the record does not show that a federal question was raised either in the trial or appellate Court.

Jacobi v. Alabama, 23 Sup. Ct. Rep. 48.
Iowa v. Rood, 23 Sup. Ct. Rep. 49.
Maxwell v. Newbold, 18 How. 511.
Oxley Stave Co. v. Butler Co., 166 U. S. 648.

II.

The Land Department having cancelled the entries without notice to the transferrer Spratt, it would not conclude him, and he would, notwithstanding the decision, have the right to show, by proof other than the cancelled certificate, that the entries were valid.

Guaranty Savings Bank v. Bladow, 176 U. S. 448.
Hawley v. Diller, 178 U. S. 488.
American Mortgage Co. v. Hopper, 64 Fed. 559.
Guaranty Savings Bank v. Bladow, 69 N. W. 41, 6 No. Dak. 108.

III.

It is a settled rule in the Land Department, that if it appears from a special agent's report (as it did in this case) or by other evidence that the land had been transferred to a third party by the original entrymen, then it becomes the

imperative duty of the officers of the Government, to give such transferee notice of the proceedings relative to the cancellation of such entry.

United States v. Copeland, 5 L. D. 170.
United States v. Richardson, 5 L. D. 253.
Windsor v. Sage, 6 L. D. 440.
United States v. Thomas, 9 L. D. 576.
Fleming v. Bowe, 13 L. D. 78.
United States v. Newman, 15 L. D. 224.

IV.

In order to defeat the holder of the equitable title, on the ground of having purchased on faith of record title in good faith, it must be specially pleaded and proved.

Pomeroy's Eq. Juris., Vol. II, Sec. 784-5.
Story Eq. Pleading (8th Ed.), Sec. 805a.

V.

The trial Court having made full findings of fact which were approved by the Supreme Court of the State, such findings are conclusive on a writ of error to such courts from the Supreme Court of the United States.

Jenkins v. Neff, 186 U. S. 230 (cases cited).
E. Bement & Sons v. Nat. Harrow Co., 186 U. S. 570 (cases cited).

VI.

This Court can only look beyond the federal question when that has been decided erroneously, and then only to see whether there are any other matters or issues adjudged by the state court sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the federal question.

McLaughlin v. Fowler, 154 U. S. 663.

ARGUMENT.

The first inquiry which arises upon the record herein is whether or not a federal question was raised in the trial Court.

The record does not show that plaintiffs in error "specially" set up or claimed a right or title under a statute or authority of the United States, in either the trial or appellate courts.

The allegation in the reply that "plaintiffs plead said holding and decision by the Commissioner of the General Land Office as to the character of said land as a conclusive bar to the claims of defendant," does not "specially" set up a right or title under a statute or authority of the United States, within the meaning of section 709 of the Revised Statutes.

In fact this allegation does not pretend to set up a right or title of any kind in the plaintiffs in error, but simply denies a right asserted by the defendant. But even if it can be said that some right or title is claimed no statute or authority of the United States is specified or referred to.

In Maxwell v. Newbold, 18 How. 511, this Court said: "The clause in the Constitution and law of Congress should have been specified by the plaintiffs in error in the State Court, in order that this Court might see what was the right claimed by them, and whether it was denied to them by the decision of the State Court."

In Oxley Stave Co. v. Butler Co., 166 U. S. 648, 654, it is said: "But can it be said that the plaintiffs specially set up or claimed the protection of that amendment against the operation of that decree by simply averring—without referring to the Constitution or even adopting its phraseology—that the decree was passed against deceased persons as well as in the absence of necessary or indispensable parties? This question must receive a negative answer, if due effect be given to the words 'specially set up or claimed' in section 709 of the Revised Statutes."

Plaintiffs in error have failed to point out even in their brief herein what statute or authority of the United States they specially claim a right or title under, or even what special right or title they claim.

Counsel in their brief say that three questions arise on this writ of error, to wit:

I.

"Was Spratt entitled to notice of the proceedings in the Land Office resulting in the cancellation of the entries?"

II.

"The Land Department having cancelled the entries of Smith and Radcliff on the ground of their being fraudulent and that the land was agricultural and not timber land, is not that a decision of a question of fact and is not the judgment of the officers of the Land Department conclusive and not reviewable by the courts?"

III.

"Conceding that Spratt was entitled to notice of the proceedings to vacate the Smith and Radcliff entries, and that he did not have such notice, is he not compelled in his suit to show by his testimony the existence of the same facts that the entrymen, Smith and Radcliff, would have been compelled to show upon the hearing ordered before the registrar and receiver of the land office?"

The first two questions we think are properly treated under one head and will therefore be discussed together.

The third is hereinafter referred to under the title of "Evidence."

Counsel's contention that the decision of the Land Department cancelling these entries bars Spratt of his equitable title has not only been settled to the contrary by this Court, but has also been time and again repudiated by the very tribunal that cancelled them.

Rule as to Notice in the Land Department.

It will be remembered that it appeared from the Special Agent's report upon which the order of cancellation was based (see printed Abstract of Record, page 57, also pages 66-7) that transfer had been made of these lands to A. N. Spratt—that the deeds were of record, etc. It further appeared from the letters of the Acting Commissioner (see printed Abstract of Record, page 59, also pages 68-9) that transfers had been made to Spratt and the Commissioner concludes the letters with the following: "If you have knowledge that the land has been transferred you will also notify the transferee."

Notwithstanding this knowledge of the fact that Spratt had purchased the lands and was the owner of whatever interest the original entrymen had in the same, the record shows that they never served or attempted to serve him with notice of these procedings.

Such a cancellation is not even recognized as a bar in the Land Department itself.

Time and again have orders cancelling entries been set aside for not giving notice to the transferee where it appeared that at the time the officers of the Government had actual knowledge that such transfer had in fact been made. One of the earliest cases is that of the United States v. Copeland, 5 L. D. 170. In that case it is said:

"And when the entryman has sold the land covered by his entry and the entry is attacked for fraud or illegality, the entryman and his transferee are entitled to a hearing before the proper tribunal to defend, and the burden of proof is upon the party attacking the entry.

"In the case at bar the Special Agent's report discloses the fact that Miss Copeland had sold and conveyed her interest in said land and the deed for the same was of record and constructive notice * * * to everybody * * * Waldock was entitled to notice of the decision cancelling said entry."

This was adhered to in the case of U. S. v. Richardson et al., 5 L. D. 253, where it is said:

"In the case of the United States v. Copeland et al., 5 L. D. 170, the Department held that where the Special Agent's report, on which the cancellation was based, discloses transfer of the land after the issuance of final certificate, such transferee should receive notice of the cancellation. In the case at bar, the notice was not received by the entryman thirty days prior to the day fixed for the hearing, and the Special Agent's report discloses the name of the transferee. Under the rules of practice and the decisions cited (*supra*) the decision of the local officers was correct, and should be affirmed. For the foregoing reasons, said decisions of your office must be modified, and the case will be returned to the local land officers, with directions to them to issue an alias notice to the entryman, and

to give notice to the transferee in accordance with the rules of practice."

In the case of Windsor v. Sage, 6 L. D. 440, it is said:

"It is clear under the decisions of this Department, the transferee has the right to appear and defend. Indeed, when the report of the Special Agent shows that there is a transferee, such prson is entitled to have notice, and has a legal right to appear and defend the validity of said entry." (Citing authorities.)

Other cases holding the same rule are cited in this brief under Points and Authorities III.

Counsel in their brief quote from the case of Cook v. Blakely, 50 Pac. 981, which cites the following Land Office decisions to sustain the proposition that notice to a mortgagee or transferee is not necessary: Featherspiel's case, 4 Land Dec. 570; Hill's, 5 Land Dec. 276; Jolime's case, 5 Land Dec. 589; U. S. v. Lawrence, 16 Land Dec. 47.

Now, in Featherspiel's case and Jolime's case, it will be noted that there was nothing in the opinion to show that the Department had notice of the transfer, but in the other two cases the opinion was put expressly on the ground that there was nothing in the Land Office record to show that a transfer had been made.

Counsel at page 7 of his brief inferentially states that at the time these proceedings were being carried on that Spratt's residence was unknown, and that he therefore could not be served. We think that this is immaterial and not shown by the record—neither does the record show that any effort was made by the officers of the Government to ascertain his whereabouts. As we understand it at this time the Rules of Practice provided for a service by publication, based on affidavit that the party could not be found—similar to the statutes in force in most of the states. However, the record in this case shows

that the officers of the Government must have known the address of Spratt, who testified that he, during the time these proceedings were pending was residing at Alpina, Michigan, and had been such resident of that place for thirty years.

The Special Agent's report not only showed the transfers but he also gives the kind of deeds (warranty), amount of consideration, their dates, and the dates they were recorded. Such recorded deeds both recite as follows: "Know all men by these presents: That I, Frank Smith (or James Radcliff) of Oak Point, Washington Territory, in consideration of $800 to me paid by A. N. Spratt of Alpina, Michigan," etc. (See Exhibits 2 and 3, pages 72-3, printed Abstract of Record.)

The rule that a transferee is entitled to notice where the officers of the Government know of such transfer is so thoroughly settled, that they could not disregard it and cut the defendant off without a hearing, and when it appears that they have disregarded rules and decisions and thus taken away vested rights, the Court will grant relief. Speaking of this power of the officers of the Land Department to abrogate its rules and decisions, Judge Sanborn, in the case of Germania Iron Co. v. James et al., 89 Fed. Rep. 811, says:

"* * * What a farce the attempt to secure rights in any judicial tribunal must become, if its rules and practice are ignored or applied at the arbitrary will of the judge who presides over the Court! Under such an administration of the Land Department, the rights and titles which the law attempts to protect and secure would become naught but privileges dependent upon the gracious favor of its officers. The power to degrade them to this rank cannot be found in the supervisory authority of the Secretary or of the Commissioner. Their power of supervision is not unlimited or arbitrary. 'It cannot be exercised so as to deprivve any person of land lawfully entered and paid for. By such entry and payment the purchaser secures a ested interest in the property, and a right to a patent therefor, and can no more be deprived of it by order of the Commissioner than he can be deprived by such order

of any other lawfully acquired property. Any attempted deprivation in that way of such interest will be corrected whenever the matter is presented so that the judiciary can act upon it.' Cornelius v. Kessel, 128 U. S. 456, 461, 9 Sup. Ct. 122; Bogan v. Mortgage Co., *supra*."

Rule Adopted by the Courts.

For the purpose of showing just what was involved in the decision of this cause by the Supreme Court of the State of Washington, we would respectfully refer the Court to the opinion which is found at pages 80-83, printed Abstract of Record. As we understand it the State Court merely followed the settled rule of this Court and holds: That defendant Spratt the transferee, and as such, the equitable owner of the land, was entitled to notice of the hearing and determination of the controversy in the Land Department; and he having alleged and proven that no notice of any kind was ever given him and that he was not a party to said proceedings, was entitled in this suit to prove by evidence other than the cancelled certificate the validity of said original entries.

The decision is placed squarely upon the holding of this Court in the case of Guaranty Savings Bank v. Bladow, 176 U. S. 448.

Counsel quotes from numerous authorities, holding that there can be no such thing as a bona fide purchaser before patent has been issued by the Government.

It is unquestionably the rule that a person who purchases from the entryman before patent cannot claim to be a bona fide purchaser and notwithstanding the fact that the original entry was illegal, prevail against a patent issued subsequently to another.

The trial Court never made any finding that Spratt was a bona fide purchaser; but found that he was entitled to prevail because the original entries of Smith and Radcliff were in fact

legal and valid. The Supreme Court affirmed the decree of the trial Court and put its decision on the same ground. Such was the claim of counsel for the defendant Spratt before the Supreme Court of the State of Washington which is shown from the following quotation from their brief:

"Counsel, in his brief, seems to misunderstand our position. There is no question that there cannot be a bona fide purchaser of an equitable interest in the land in controversy, that is by a transfer after final certificate is issued and before patent. The defendant Spratt by his deeds merely took whatever interest the entrymen had under their final certificates; and if said entries were illegal, then he cannot rely on the fact that he was a bone fide purchaser and notwithstanding their illegality hold the land in controversy. But he being the equitable owner of the land at the time of the cancellation of these certificates, the Department having actual notice of such fact—and not having been made a party to the proceedings—such cancellation does not preclude him from having his day in Court to prove the legality of such original entries."

If there was ever any doubt as to this being the correct statement of the rule we think the two cases of Bladow v. Guaranty Savings Bank, 176 U. S. 448, and Diller v. Hawley, 178 U. S. 488, settle it.

Mr. Justice Peckham wrote the opinion in the first of these cases and fully discusses and lays down the rule as to the rights of transferees. We quote the following portions of that opinion:

"* * * The certificate was *prima facie* evidence of the right of the entryman to a patent, but the power rested with the Land Department, upon proper notice, to set it aside and cancel the entry, and thus take away from him that *prima facie* evidence. United States v. Steenerson, 4 U. S. App. 332, 50 Fed. Rep. 504, 1 C. C. A. 552; American Mortgage Co. v. Hopper, 56 Fed. Rep. 67; S. C. on Appeal, 29 U. S. App. 12, 64 Fed. Rep. 553, 12 C. C. A. 293. If the entry were cancelled

arbitrarily and without evidence or notice to him, it would not conclude him, and he would, notwithstanding the decision, have the right to show that his entry was valid, and that he was entitled to a patent. * * *"

"But the cancellation, although conclusive as to the entryman, upon all questions of fact, if made after notice to him, would not be conclusive upon the mortgagee, if made without notice to such mortgagee and with no opportunity on its part to be heard. That is, it would not prevent the mortgagee, before the issuing of a patent, from taking proceedings in the Land Department, and therein showing the validity of the entry, or from proceeding before a judicial tribunal against the patentee, if a patent had already issued, and therein showing the validity of the entry; such proof in each case would, however, have to be made by evidence other than the certificate which had been cancelled. Had the mortgagee taken either of these courses, it might have demanded in the one case, upon proving the validity of the entry, that a patent should be issued to the mortgagor or his grantees, leaving the land subject to the lien of the mortgage, or if a patent had been issued, the mortgagee might have demanded relief against the patentee upon proof of the validity of the entry, in a proceeding in Court to hold him as trustee. * * *"

Again, in the same opinion:

"If the plaintiff in error, even in this foreclosure suit, had alleged that the entry had been canceled, and that a patent for the land had been thereafter issued to the defendant, and had asked that the patent so issued to him should be held by him in trust and as security for the payment of the plaintiff's mortgage on the ground that the entry had been improperly canceled as to it, and had proved on the trial that Anderson's entry was legal, it may be that it would have been entitled to a judgment decreeing the defendant a trustee of the title under his patents from the Government and providing for the sale of the land in order to pay the mortgage, or some other appropriate relief might have been granted."

The case at bar is much stronger than this or any of the cases we have cited, in that it does not appear, as it does in this case, that at the time the officers of the Land Department had actual knowledge of such transfer.

In the still later case of Diller v. Hawley, 178 U. S. 488, Mr. Justice Harlan, who wrote the opinion of the Court, recognizes the same rule, as follows:

"Of course, that Department could not arbitrarily destroy the equitable title acquired by the entryman, and held by him or his assignee. Those who hold such title have a right to be notified of and heard in any proceeding instituted in the Land Department having for its object the cancellation of the entry upon which the equitable title depends."

Counsel in their brief cite and quote at length from the case of American Mortgage Co. v. Hopper, 64 Fed. 559, decided by the Court of Appeals for the Ninth Circuit.

The Supreme Court of the State of Washington, commenting on the holding of this case, says:

"This is not inconsistent with the determination in Guaranty Savings Bank v. Bladow, *supra*."

In the Hopper case, the late Judge Raleigh Stott, who framed the issues and tried this case in the lower court, was also counsel and there contended that the transferee could not rely on the cancelled certificate, but must make out a *prima facie* case by other proof, showing that the original entry was in fact legal and valid. It will be noted that the Circuit Court of Appeals decided this to be correct and held that the transferee made no proof of the legality of the original entry except by the final canceled certificate and stipulation that he was qualified to make a legal and valid entry. However, the Court held that the transferee had the right to show that the entry was a legal and valid entry.

The case of Cook v. Blakely, 50 Pac. 981, cited and quoted from at page 11 of counsel's brief, is the only case we have

found that in anyway holds a contrary view; and to support the view there taken some decisions of the Land Department only are cited, with reference to the necessity of notice. We have already commented on these four decisions in this brief, under the heading, "Rule as to Notice in the Land Department"; and as stated there, they do not support either the contention of counsel in this case or the decision of the Court in Cook v. Blakely, which so far as we are aware was never affirmed by the Court of last resort of that State.

Commenting on this decision the Supreme Court of Washington in the present case well said:

"Some of the expressions used in the opinion in Cook v. Blakely do not seem to be in accord with the weight of authority."

The case of Parsons v. Venzke, 61 N. W. 1041, also cited by counsel, was put squarely upon the ground that all the parties had appeared and contested the case in the Land Department, and at page 1042 of the opinion it is said:

"When the bona fide purchaser who holds the interest of the entryman at the time of the commencement of the cancellation proceedings is not heard and has no chance to be heard before the Department, possibly the proceedings will be regarded as *ex parte* with respect to him and he be allowed to prove in Court the lawfulness of the entry." (Citing authorities.)

This case was afterwards brought before this Court on a writ of error (Parsons v. Venzke, 164 U. S. 89); and in the opinion of the Court, written by Mr. Justice Brewer, it is said:

"* * * A jurisdiction not arbitrary or unlimited, nor to be exercised *without notice to the parties interested,* nor one beyond judicial review under same conditions as other orders and findings of the Land Department.

"In this case the entryman was brought in by due publication of notice, *and the real party in interest appeared.* The

contest was carried through the Land Department from the lowest to the highest officers, and there is nothing in the record which brings the case within the rules so often laid down for a judicial reversal of the decisions of that Department."

EVIDENCE.

Counsel in their brief not directly but by inference seem to question the proof offered by defendant in error to sustain the validity of the original entries and also the findings of fact of the trial Court, which were specifically approved by the Supreme Court; and in the concluding page of their brief prints the oral testimony. They however have omitted a large part of the testimony offered by stipulation and otherwise, as is shown by the record.

Before proceeding further, it will be remembered that the trial Court made full and complete findings of fact covering the validity of these entries and showing a full compliance with the Timber and Stone Act of June, 1878. Plaintiffs in error appealed the case to the Supreme Court of the State, and that Court in its opinion, commenting on the proof offered, say:

"He (meaning defendant in error) has not relied upon the certificate of the entries of Smith and Radcliff, but has shown by evidence other than the certificates the validity of those entries. The findings of fact of the trial Court show that the land in controversy was in fact timber land within the provisions of the Act of Congress, and that the entries were made in good faith. We have reviewed the testimony and we fully approve the findings."

Counsel's contention as we understand it is that the proof offered by Spratt was not sufficient to sustain the findings of fact of the trial Court. Now there is no rule better settled than the one that this Court on a writ of error to the State Court,

will treat such findings as conclusive. (See cases cited under Points and Authorities IV.)

Undoubtedly, however, if this case now came before this Court to be tried *de novo* it would make exactly the same findings.

The proof offered was full and complete.

Affidavits of the original entrymen together with the testimony of their witnesses at the making of final proof was offered in evidence by plaintiffs in error, and admitted and considered in accordance with written stipulation marked "M." These affidavits and the testimony of the witnesses will be found included in Exhibits "A" and "B" and the parts relating to the two timber entries can be found at pages 51-55, printed Abstract of Record, also pages 61-64. There was no objection as to the competency of this testimony or motion made to strike it out either in the trial Court or the Supreme Court of the State. It was introduced as stated before in accordance with the written stipulation marked Exhibit "M," which is printed in the Abstract of Record commencing at page 74, Printed Abstract of Record, from which we quote as follows:

"It is hereby stipulated by and between the respective parties to the above entitled suit—

"1. That the certified copies from the Commissioner of the General Land Office herewith filed in this case, marked Exhibits "A," "B," "C" and "D," together with letters, Exhibits "E," "F," "G," "H," "I," "J," "K" and "L," are correct, full, true and complete transcripts of all proceedings of the land office at Vancouver, Washington, and of the General Land Office, Department of the Interior, Washington, D. C., touching the pre-emption entry of Frank Smith for the northwest quarter of section thirty-two, township nine, north, range four, west of the Willamette meridian, and of the timber-land entry of Frank Smith for the northeast quarter of section thirty-two, township nine, north, range four, west of the

Willamette meridian, and of the pre-emption entry of James M. Radcliffe for the southwest quarter of section thirty-two, township nine, north, range four west W. M.; and of the timber-land entry of James M. Radcliffe for the southeast quarter of section thirty-two, township nine, north, range four, west W. M.; *and that said exhibits are in evidence in this case and may be considered by the Court.*

Exhibits "C" and "D" and certain other exhibits were omitted from the record on appeal, according to another stipulation as to the statement of facts, which states that they are not incorporated therein "by agreement of counsel for the reason that the said exhibits refer entirely to and contain certain pre-emption entries of said Smith and Radcliffe and nothing appears in said exhibits so left out relating to or concerning said timber entries.

Counsel now in their brief criticise the proof of the defendant in error because the witnesses Smith and Radcliffe were not personally called as witnesses. What was the necessity of calling them—they could not, if called, have added to their former testimony introduced in evidence by their written stipulation.

Such a contention has no merit in it, for counsel themselves by this written stipulation have stipulated that these Exhibits "A" and "B" containing these affidavits and testimony "*are in evidence in this case and may be considered by the Court.*"

They never in any manner as the record shows objected to the testimony on the ground of its incompetency — or limited it as proof of any particular fact. They certainly are estopped at this late day by their written stipulation and failure to raise some objection to it in the trial court. See the late case of Jacobi v. Alabama, 23 Sup. Ct. Rep. 48.

It was proved by two witnesses of many years experience in examining timber lands—C. N. Hogan and Robert Osborn

(see printed Abstract of Record, pages 45-50)—that these lands were chiefly valuable for their timber, and that they were unfit for cultivation in their then condition.

The only thing in evidence in the case with reference to any fraud or speculation is contained in the bare statement of the Special Agent, made prior to the cancellation, that he believes the entries were fraudulent—there is not a bit of evidence from him stating a circumstance of the fraud. On the other hand, he states that B. I. Dietz and C. N. Hogan will swear that the entries were made for speculation, or fraudulently. Hogan, who was a witness in this case in the Court below, swears positively that he was with the Special Agent at the time the land was examined by him; and that he never heard or had any knowledge of any fraud or speculation.

The only fact placed before the Land Department to show an entry for speculation, was the statement in the report of the Special Agent that the lands were transferred to defendant Spratt, after final proof and before patents were issued, which these entrymen had a perfect right to do under the repeated holdings of this Court.

We also have the deposition of the defendant Spratt that he purchased the land from the original entrymen by warranty deed, and that he never had an agreement, directly or indirectly, with them prior to their acquiring title.

The letter of the Commissioner holding these entries for cancellation was put upon the sole ground that the land was not subject to entry, and the notice sent to the entrymen shows that it was upon this ground that the entries were held for cancellation.

The record of the Land Department also clearly shows that it was only in following the misconstruction of the Timber and Stone Act of June, 1878, that the validity of these entries was ever questioned. As the Court is aware, until the decision in the case of U. S. v. Budd & Montgomery, *supra*, the Land

Department held that if the timber could be cut and removed, no matter how valuable it might be, and the land afterwards be used for cultivation, then it could not be taken up under this Act. That is, they held that in determining the character of the land its then condition did not control.

The two affidavits accompanying the Special Agent's report, upon which the entries were canceled can be found at pages 58 and 67, printed Abstract of Record. In these affidavits appears the following language: "Soil, dark clay loam, gently rolling; creek running across this land; covered with fir, cedar and hemlock trees; *this would be valuable land for agricultural purposes after timber is removed.*"

The order cancelling these entries on such a record is clearly at variance with the construction given the Act by this Court.

While defendant in error offered proof which clearly demonstrates the legality and validity of these entries, the plaintiffs in error have offered nothing to the contrary. The position taken by them as is disclosed by the record throughout this case, was that the decision of the Land Department was conclusive as to Spratt's equitable ownership of these lands.

In regard to the proof required in this class of cases it is said in Bladow vs. Guaranty Savings Bank, 69 N. W. 43:

"Moreover, in such cases the Court would incline to consider slight evidence as sufficient *prima facie* proof that the original entry was in fact valid, and compel the holder of the patent to sustain by evidence the finding of the Department that it was illegal. No hardship could result to the holder of the patent from such a rule, for the fact that the cancellation of the original entry was *ex parte* will appear from the records of the land office, and he is therefore chargeable with knowledge that the question of fact whether such entry was legal is still open to investigation in the courts, and that from the very nature of the case the original entryman or those claiming

under him, should not be held after the lapse of a considerable period of time, to a high degree of proof to establish a *prima facie* right."

Counsel in their brief speak of the fact that the plaintiffs purchased on the faith of the patent and record, and that it would be a dangerous rule to now deprive them of this land. This was not in issue in the trial Court, and had it been it would undoubtedly have been met. There is nothing in the reply or pleadings of such a state of facts.

There is no rule better settled than that he who seeks to defeat the equitable owner must allege and prove that he bought on the faith of the record title—that is, that the doctrine of bona fide purchaser is a defense that must be specially pleaded and proved. There is nothing either in the pleadings or proof that plaintiffs bought these lands without knowing of Spratt's recorded deeds. See Points and Authorities IV.

In the brief of appellants several cases are cited which hold that it is not necessary to plead the defense of *laches* to bar an equitable right. Admitting such to be the rule, yet it seems to us where such a defense is not pleaded—that *prima facie* a most unwarranted case of *laches* as defined by the authorities should be shown in order to defeat the equitable owner of his title. For had such a defense been an issue at the trial such equitable owner could no doubt have shown facts excusing the delay; and that his claim of ownership was well known to all the parties in interest.

The rule with reference to this as announced in numerous decisions of this Court is that *laches* is not like limitations, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced.

Under the facts there has been no such *laches* shown as should bar defendant from the relief asked. In the first place, it must be remembered that the patents to the entryman under which plaintiffs claim were not issued until June 25, 1890.

Now, during the time intervening between the date of the cancellation of the entries in question and the date of patent, the only remedy the defendant could have had was to have filed an application in the land office to have these entries reinstated. But that would have availed him nothing, because the case of Montgomery & Budd v. United States was not decided by the United States Supreme Court until long after the date of these patents; and as the Court knows, until that was decided, the officers of the Land Department continued to follow their erroneous construction of the Timber Act. For this reason Spratt had no remedy before the Land Department. There is no testimony in the record that the land in question is more valuable today than it was at the date of these patents, or at any other prior date. There is no testimony, nor is it a fact that the plaintiffs have made any improvements on these lands. There is no testimony that the defendant has ever acquiesced in the claim of the plaintiffs. There is no testimony in the record that during the time since patent was issued, and up to the time of filing the complaint herein, that anyone was ever in possession of the land.

These facts being before the Court, how can it for a moment be contended that the equitable owner of this land, by reason of delay only, without any other element intervening, is not entitled to relief in a court of equity?

No decision holding a party guilty of *laches*, and therefore not entitled to relief, was ever founded on such a state of facts and circumstances as exist in the case at bar.

Plaintiffs themselves brought this suit to remove a cloud from their title to these lands, and it seems to us that they, after the long delay in bringing it are in a rather peculiar position to complain of stale demands or *laches*.

While these last contentions of counsel are without merit under the pleadings and facts in this case, yet if the Court should determine that a federal question is involved, as counsel claim, towit, the binding effect of the cancellation of these en-

tries by the Land Department—but holds that it was properly decided in favor of defendant in error, the Court, as in numerous cases decided, will not pass on these other questions, and disturb the judgment of the State Court.

The case is respectfully submitted with the fullest confidence that the Supreme Court of the State of Washington was correct in affirming the decree of the trial Court.

JOHN H. MITCHELL,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 207.—October Term, 1902.

G. H. Thayer, Administrator, &c., et al., Plaintiffs in Error, vs. A. N. Spratt. } In error to the Supreme Court of the State of Washington.

[April 6, 1903.]

The plaintiffs in error in December, 1898, brought this action in the State court against the defendant for the purpose of quieting their title to certain land described as section 32 in township 9, &c., situated in Cowlitz County, State of Washington. They obtained judgment in their favor for the northwest and southwest quarters of the section, but the court gave judgment in favor of the defendant for the northeast and the southeast quarters of the same section, and directed that the patents for the two quarters of the section which had been issued on June 25, 1890, to plaintiffs' grantors should be held by the plaintiffs in trust for the defendant, and that the plaintiffs should execute a proper deed therefor, and in default of such deed of conveyance the decree of the court was to stand and be treated in the place of such deed. The plaintiffs appealed from that portion of the judgment just described to the Supreme Court of the State, where it was affirmed, and they have brought the case here for review.

The northeast and the southeast quarters of the section were entered in the proper land office in Washington under the act of Congress approved June 3, 1878, and entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory. (20 Stat. 89.) These entries were made on May 26, 1883, and the entrymen, after payment for the land by them to the land office and the receipt of a certificate of such payment, and about six months thereafter, assigned and transferred the certificates to the defendant for a valuable consideration paid to them by him. After such transfers had been made and a record of the deeds of conveyance had also been made in the records of Cowlitz County, which was the proper office, the Land Department informed the register and receiver of the land office at Vancouver, Washington, that action had been suspended upon the entries based upon the report of the special agent regarding the lands, and the department directed the register and receiver to give notice to the original entrymen of a time and place when and where they might be heard, and in default that their entry

would be cancelled. The department also stated that it appeared from the report of its special agent that the lands had been transferred by warranty deed of March 13, 1884, to the defendant, and it therefore directed that notice should be given him as the transferee, but for some reason this direction was overlooked and no notice was ever given defendant of the pendency of any proceedings towards the cancellation of the certificates or either of them which had been transferred to him.

At the time he purchased the certificates the defendant resided in Alpena, Michigan, and resided there for thirty years, and the deeds to defendant, which were on record, showed his residence to be in that place.

The notices by mail to the entrymen were not received, the letters to them being returned as "uncalled for," and so it happened that there was no hearing before the Land Department upon the return of the order, and the entry was cancelled in the absence of both of the entrymen and the defendant, the transferee.

The action of the department was taken upon the report of one of its inspectors, which was founded, as stated in the report of such inspector, upon the fact that the land was not of the character provided for in the act, for the reason that, although covered by a heavy growth of valuable timber and chiefly valuable as such at that time, yet as it would be fit for cultivation when the timber should be removed, it was on that ground held that the land was not subject to entry under the timber act of 1878, (*supra*). This was the sole and only reason upon which the Land Department rested its action in cancelling the entries and certificates.

After their cancellation, certain homestead entries were made upon these two quarter sections by Benjamin L. Hennis for the northeast quarter, and by Ellis Walker for the southeast quarter, patents were issued to them, and the plaintiffs deraign title from those patentees.

Upon the trial evidence was given by the defendant as to the character of his ownership; that he purchased the different quarter sections in good faith from each of the parties who had entered them, and without any agreement in reference to the purchase before final proof, &c., and that he had never heard of the entrymen before he made the purchase from them through his agent, and paid them the sum of $800 for each quarter section, (double the price paid for the land by the entrymen to the government,) and that the total cost of the land, including his expenses paid to his agent and to the parties who made the locations, &c., amounted, as the defendant testified, to about $4,400.

The defendant on the trial also gave evidence tending to show that the land in question had the finest quality of timber on it, and that in its then existing condition the land was chiefly valuable for timber and would probably run 200,000 feet to the acre. The land would have to be cleared and then it might be cultivated, but it would all have to be cleared first.

It was stipulated between the parties, on the trial, that certain papers named and on file in the office of the Commissioner of the General Land Office, and certain exhibits from the land office in Vancouver, in the State of Washington, relating to the proceedings in making the entry for the lands in question by the defendant's grantors, might be regarded as in evidence in the case and be considered by the court, and the copies of such papers then presented to the court were admitted to be "correct, full, true and complete transcripts of all proceedings of the land office at Vancouver, Washington, and of the General Land Office, Department of the Interior, Washington, D. C., touching . . . the timber land entry of Frank Smith, for the northeast quarter of section 32 (&c.), and also the timber land entry for the southeast quarter of section 32," &c. These papers showed that the entrymen for the northeast and the southeast quarters were entitled to enter the lands under the timber act, and that all the necessary facts required by the act and the Land Department officials had been proved by them to entitle them to enter the specific lands.

The finding of the court shows there has never been any dispute as to the actual condition of the land, but the entries were vacated and the certificates cancelled because the Land Department held the land was not of the kind to be entered under the timber act of 1878, for the reason that, after the timber should be cleared, the land would be good agricultural land.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The decision of the Land Department as to the character of the land in question resulted from an erroneous construction of the timber act of June 3, 1878. There was no dispute as to the actual condition of the land, but the department held that land so situated could not be entered under the timber act. In this construction the department made a legal error. It has been held by this court that the act included lands covered with timber, but which might be made fit for cultivation by removing the timber and working the land. (*United States* v. *Budd*, 144 U. S. 154.) Mr. Justice Brewer, in delivering the opinion of the court in the above case, states as follows:

"Lands are not excluded by the scope of the act because in the future, by large expenditures of money and labor, they may be rendered suiable for cultivation. It is enough that at the time of the purchase they are not, in their then condition, fit therefor. The statute does not refer to the probabilities of the future, but to the facts of the present. Many rocky hill-slopes or stony fields in New England have been, by patient years of gathering up and removing the stones, made fair farming land; but surely no one before the commencement of these labors would have called them fit for cultivation. We do not mean that the mere existence

of timber on land brings it within the scope of the act. The significant word in the statute is 'chiefly.' Trees growing on a tract may be so few in number or so small in size as to be easily cleared off, or not seriously to affect its present and general fitness for cultivation. So, on the other hand, where a tract is mainly covered with a dense forest, there may be small openings scattered through it susceptible of cultivation. The chief value of the land must be its timber, and that timber must be so extensive and so dense as to render the tract as a whole, in its present state, substantially unfit for cultivation."

The lands in this case are within that description. The evidence shows that the timber was excellent, as good as any in that section of the country. It was as good as any ever examined by the witness, who had had large experience. In fact he said there was none better in that part of the country, and the quality of the timber was large to the acre, but the land was not especially valuable for cultivation until it had been cleared.

Even though the decision of the Land Department was erroneous, yet having been made, and the entries and certificates cancelled, although without notice to defendant, they could not thereafter be used even as *prima facie* evidence of the validity of the original entries. It was perfectly easy to have given defendant notice of the proposed cancellation. He resided in Alpena, Michigan, and the deeds showed that fact, and the record shows the department was aware of their existence through the report of its special inspector. There is no hardship or inconvenience, therefore, in holding that, in a case, at least, where the residence is known, the transferee has the right to notice. If not known, a publication of notice ought at least to be made. It seems this is the practice of the Land Department.

It has been held in this court, in *Guaranty Savings Bank* v. *Bladow*, (176 U. S. 448,) and *Hawley* v. *Diller*, (178 Id. 476, 488,) that a cancellation of a certificate of entry was not conclusive as against a transferee who had no notice and no opportunity to be heard upon the question of the original validity of the entry, but that it left the transferee without the right to use the entry certificate as *prima facie* evidence of the validity of the entry or of his subsequent claim. The transferee is, however, left free to prove the validity of the entry by any means other than the certificate. Although the assignment or conveyance of the certificates did not transfer the legal title to the lands described therein, yet the transferee or grantee thereby became possessed of an equitable interest in the lands which could not be taken from him without some notice. The character of the certificates as a mere means of evidence could be and was destroyed, but the transferee was nevertheless not thereby deprived of his right to show the validity of the former entry.

In this case we think he has done so. He proved by his own evidence that he was a *bona fide* purchaser of the property for value paid to the

entrymen, and that he had no agreement or understanding of any kind with them prior to the time that he purchased the land from them.

We do not refer to the *bona fide* character of the purchase by defendant from the entrymen for the purpose of thereby showing the defendant to be entitled to the benefit of that character under section 2 of the timber act of 1878. The reason that he is not so entitled is that by the assignment of the certificates he did not become clothed with the strict legal title to the land, but simply with an equity, and the act does not cover such a case. (*Hawley* v. *Diller*, 178 U. S. 476, 487.) We refer to the *bona fide* character of the purchase by defendant, for the purpose only of showing it was without any prior agreement or understanding with the entrymen, and was not in violation of the provisions of the timber act.

The stipulation between counsel that the papers on file in the Land Department might be regarded as in evidence and considered by the court, permitted the court to regard those papers as properly introduced in evidence and competent to be considered by it in the further consideration of the case. Those papers show a compliance on the part of the entrymen with all the provisions of the timber act and a valid entry under it in regard to the lands in question. As the entries had not been cancelled for any fraud in fact, but only upon an erroneous interpretation of the law by the department, the evidence of such error being apparent on the trial, the defendant did all he was required to do in order to show the entries valid, and if the plaintiffs wished to show any fraud in fact, to overcome the case made by the defendant, they were called upon to do so, otherwise the original proof being sufficient to warrant the issuing of the certificates, that proof would be regarded as sufficient on the trial of this suit.

There is not a word of any proof showing any fraudulent act on the part of the entrymen or of their transferee, the defendant herein, and, on the contrary, there is proof of an absence of any fraud and the *bona fide* purpose on the part of the entrymen to properly avail themselves of the act of 1878.

But however this may be, we are precluded by the finding of facts in the State court from looking at the evidence upon which such findings may rest. Upon a writ of error to a State court this court has no right to review its decision upon the ground that the finding was against evidence or the weight of evidence. (*Egan* v. *Hart*, 165 U. S. 188; *Gardner* v. *Bonesdell*, 180 Id. 362, 370; *Bement* v. *National Harrow Company*, 186 Id. 70, 83; *Jenkins* v. *Neff*, Id. 230, 235.)

By the findings in this case it appears that the entrymen at the time of making their entries were entitled to purchase the lands under the act of Congress of 1878, and that they duly made such application, duly verified by the oath of the applicants before the register of the land office, and that in the purchase of the land they fully complied with the laws of

the United States and the rules and regulations of the Land Department, and that all the requirements of the timber and stone act in regard to making a legal and valid entry and purchase thereunder were fully complied with by the entrymen, and that thereafter the applications were allowed and certificates duly issued as applied for, and the lands included in the entries were at all times chiefly valuable for the timber thereon and at that time unfit for cultivation. It was also found that the action of the land office in canceling the timber entries was based upon a misconstruction of the act of 1878, and that the department, by reason of such misconstruction, erroneously held that land covered with a heavy growth of valuable timber, if it could be successfully cultivated after the timber was removed, was not subject to entry as timber land under that act, although the timber on the land might be itself the chief element of the value of the land, and the land could not be cultivated at all in its then condition.

Upon these findings it is apparent that the defendant showed the validity of the entries by his grantors, and that their conveyances to him passed a good equitable title to the lands in question for which he was entitled to a patent from the United States, and that as such patent was granted to appellants, the defendant was entitled to the relief given him by the judgment.

The judgment of the Supreme Court of the State of Washington is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S